

**The Promotion of the Right of Self-Determination in
International Law and the Impact of the Principle
of Non-Interference**

A thesis submitted for the degree of Doctor of Philosophy

Yahya Alshammari

School of Law, Brunel University London

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Declaration

I declare that I have composed this thesis, that this work is my own and that it has not been submitted for any other degree or professional qualification.

Yahya Alshammari

Abstract

This dissertation presents an analytical study of the evolution of the right of political self-determination and the influence of the principle of non-interference on promotion of this right. The intellectual and legal interests in democracy, good governance and social justice have contributed to the development of this right and its realisation for peoples lacking the least degree of good governance. The right of political self-determination is strongly associated with international intervention because governments facing popular demands for this right often resort to repression and military means to suppress such claims. Such interventions have also been driven by contemporary interest in supporting collective rights through international organisations that monitor and identify violations of various political rights. Thus, this dissertation focuses on the tension between the principle of non-interference and the modern legal trend to promote the political rights of all peoples. This research contributes considerable insights into the transformation of the principle of non-interference from an absolute obligation into a flexible concept by tracing the contributing legal changes both in international practices and in emerging rules and principles in international law. It is concluded that the promotion of the right of self-determination has resulted in international practices that have dramatically influenced and caused tension with the principle of non-interference.

Keywords: right of political self-determination, democracy, statehood, the principle of non-interference, international intervention, sovereignty.

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Table of Contents

| | |
|--|----|
| Declaration | 2 |
| Abstract..... | 3 |
| Acknowledgements..... | 4 |
| Table of Contents | 5 |
| Abbreviations | 8 |
| Table of Statutes and Conventions..... | 10 |
| Table of International Instruments..... | 12 |
| Introduction | |
| 1. General Background:..... | 18 |
| 2. The Scope of Study | 20 |
| 3. Aims of Study | 21 |
| 4. Research Question..... | 21 |
| 5. Methodology..... | 22 |
| 6. Thesis Outline:..... | 23 |
| Chapter one | |
| The Right of Political Self-Determination in International Law..... | 26 |
| 1.1 Introduction..... | 26 |
| 1.2 The concept of self-determination..... | 27 |
| 1.3 The rise of self-determination in international law | 28 |
| 1.4 The right of self-determination in contemporary international law | 31 |
| 1.4.1 Legal nature of the right of self-determination | 34 |
| 1.4.2 Limits of the application of self-determination..... | 37 |
| 1.4.3 The definition of the people in the right of self-determination..... | 41 |
| 1.5 The Emergence of the Right of Political Self-determination..... | 44 |
| 1.5.1 Democracy in political self-determination | 48 |
| 1.5.2 The Claims for Political Self-determination and Repressive Regimes..... | 54 |
| 1.6 Conclusion | 58 |
| Chapter Two | |
| The right of political self-determination, statehood and recognition in international contemporary law | 60 |
| 2.1 Introduction..... | 60 |
| 2.2 Statehood in international law | 62 |

| | |
|---|-----|
| 2.3 The legal criteria for statehood..... | 64 |
| 2.4 The right to political self-determination and the criteria for statehood..... | 73 |
| 2.4.1 Legal criteria for statehood after the Cold War | 78 |
| 2.4.2 The role of non-state actors in the construction of criteria for the modern state | 82 |
| 2.5 International recognition and the right of political self-determination in the criteria for statehood | 86 |
| 2.5.1 Constitutive theory | 90 |
| 2.5.2 Declaratory theory | 91 |
| 2.5.3 Differences between constitutive and declaratory theory | 91 |
| 2.6 Recognition and the standard of homogeneity and integration..... | 98 |
| 2.7 Democracy and Statehood | 104 |
| 2.8 Conclusion | 106 |

Chapter Three

| | |
|--|-----|
| The legal aspects of international intervention and the principle of non-interference in international law | 108 |
| 3.1 Introduction..... | 108 |
| 3.2 Legal aspects of international intervention | 109 |
| 3.3 The legal rules and international intervention..... | 111 |
| 3.3.1 International humanitarian intervention under customary international rules | 111 |
| 3.3.2 Legal rules derived from international conventions..... | 116 |
| 3.4 The principle of non-interference and state sovereignty in international law | 122 |
| 3.4.1 The principle of non-interference | 124 |
| 3.4.2 The concept of Non-interference in a transformative phase | 129 |
| 3.4.2.1 Report of the International Commission on Intervention and State Sovereignty | 132 |
| 3.4.2.2 The report of the committee of High-Level Panel on Threats, Challenges, and Change | 134 |
| 3.4.2.3 The principle of responsibility to protect (R2P) | 135 |
| 3.4.2.4 The impact of international criminal tribunals on the principle of non-interference..... | 137 |
| 3.4.2.5 Security Council resolutions authorising international intervention | 142 |
| 3.5 Conclusion | 144 |

Chapter Four

| | |
|---|-----|
| The legal concept of international intervention to promote the right of political self-determination..... | 146 |
| 4.1 Introduction..... | 146 |
| 4.2 Meaning of international intervention to support the right of political self-determination..... | 146 |
| 4.3 Legal basis for international interventions to promote the right of political self-determination..... | 153 |
| 4.4 Legal limitations to the legitimacy of intervention to promote the right of political self-determination..... | 159 |
| 4.5 The element of coercion in international intervention | 161 |
| 4.5.1 The first requirement: The legal content of the idea of coercion..... | 161 |
| 4.5.2 The second requirement: The extent of the idea of coercion in an intervention implemented by the United Nations or a country..... | 164 |
| 4.6 Domestic jurisdiction and political rights and freedoms..... | 167 |
| 4.8 Conclusion | 172 |

Chapter Five

| | |
|--|-----|
| International practices to promote the right of political self-determination and the principle of non-interference. | 174 |
| 5.1 Introduction..... | 174 |
| 5.2 International practices to promote the right of political self-determination and the principle of non-interference in the Cold War..... | 175 |
| 5.2.1 Southern Rhodesia..... | 177 |
| 5.2.2 Dominican Republic..... | 185 |
| 5.2.3 Panama..... | 187 |
| 5.3 International practices to promote the right of political self-determination and the principle of non-interference after the end of the Cold War | 191 |
| 5.3.1. Haiti..... | 191 |
| 5.3.2 Sierra Leone | 197 |
| 5.3.3 Libya..... | 203 |
| 5.3.4 Syria | 211 |
| 5.5 Conclusion | 216 |
| Conclusion | 219 |
| Bibliography:..... | 223 |
| Publications: | 260 |

Abbreviations

| | |
|--------|--|
| AU | African Union |
| ECHR | European Convention on Human Rights |
| ECOWAS | Economic Community Of West African States |
| CAT | Convention Against Torture |
| CPPCG | The Convention on the Prevention and Punishment of the Crime of Genocide |
| CSCE | Commission on Security and Cooperation in Europe |
| ICC | International Criminal Court |
| ICJ | International Court of Justice |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICISS | International Commission on Intervention and State Sovereignty |
| ILC | International Law Commission |
| NATO | North Atlantic Treaty Organisation |
| OAS | Organisation of American States |
| OSCE | Organization for Security and Co-operation in Europe |
| UDHR | Universal Declaration of Human Rights |

| | |
|---------|--|
| UN | United Nations |
| UNAMSIL | United Nations Mission in Sierra Leone |
| UNDP | United Nations Development Programme |
| UNCHR | United Nations Commission on Human Rights |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNGA | General Assembly |
| UNSC | United Nations Security Council |
| UNHCR | United Nations High Commissioner for Refugees |
| UNHRC | United Nations Human Rights Council |

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1919

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1933

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1945

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The Universal Declaration of Human Rights

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1950

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1966

The International Covenant on Civil and Political Rights

The International Covenant on Economic, Social and Cultural Rights

1967

The Charter of the Organization of American States

1973

International Convention on the Suppression and Punishment of the Crime of Apartheid

1981

African Charter on Human and Peoples Rights

1990

Paris Charter for a New Europe

1992

The Treaty on the European Union

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Introduction

1. General Background:

In the post-World War II era, the right to self-determination became paramount as a key tenet of international law.¹ The emergence of the principle includes two popular demands: Independence from colonialism and Secession from existing sovereign entities.² Subsequently, after the end of the Cold War era, populations, and especially those living under dictatorships, began demanding their political rights to good governance and democracy. Democracy thereby became the gold standard aspiration for the right to self-determination.³

The right to political self-determination is the cornerstone of attempts to end dictatorships and crucial to contemporary human thought. It enables people to participate in the decision making process essential to the establishment of rights and choosing the type or style of governance that will run a country. Theoretically, it is widely accepted by the international community, which supports democracy (a system of government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections), as a model of good governance.⁴ This support has been expressed through international conventions and conferences, such as: the International Covenant on Civil and Political Rights (ICCPR) 1966, and other pronouncements by the United Nations Security Council (UNSC) particularly Resolution 792 of 1992 which called for a free and fair elections in Cambodia.⁵

¹ Karen Knop, *Diversity and Self-Determination in International Law*, Cambridge University Press, 2002, pp. 53-54. See also Helen Quane, *The United Nations and the Evolving Right to Self-Determination*, *International and Comparative Law Quarterly* (1998) Vol. 47, pp. 537-572.

² Anne Bayefsky, *Self-determination in International Law: Quebec and Lessons Learned : Legal Opinions*, Martinus Nijhoff Publishers, 2000, p. 283. See also Milena Sterio, *The Right to Self-determination Under International Law: "selfistans", Secession and the Rule of the Great Powers*, Routledge, 2013, pp. 9-21

³ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review*, Volume 57, 2010. See also Jure Vidmar, *The Right of Self-determination and Multiparty Democracy: Two Sides of the Same Coin?* *Human Rights Law Review* (2010) Vol. 10, No. 2, pp. 239-268. See also Jure Vidmar, *Democratic Statehood in International Law : The Emergence of New States in Post-Cold War Practice*, Hart Publishing Limited, 2013, pp 10-38.

⁴ Anna Jarstad, *From War to Democracy: Dilemmas of Peacebuilding*, Cambridge University Press 2008, p. 5.

⁵ UN, Security Council, Resolution 792 (Nov 1992).

The right to political self-determination has also been a major factor instigating the Arab revolutions that began in 2011 referred to as the ‘Arab Spring’. Agitations in Tunisia, Egypt, Yemen, Libya and Syria called for an end to dictatorial regimes, the establishment of good governance, respect for freedom and the implementation of true democracy. Meanwhile, anti-revolutionary efforts have driven regimes to suppress such claims and thus perpetrate international crimes in attempts to remain in power and preserve the status quo. Such forms of systemic repression push the international community to intervene, in order to put an end to human rights violations and tyranny.

In recent years, developed Nations have intervened in country’s political activities overtly and or covertly, to support the oppressed people and promote the development of democracy and good governance. This trend was reflected in David Cameron’s (the British Prime Minister) decision to intervene in the uprising of the Libyan people against the government of Muammar al-Gaddafi. Cameron stated, ‘I think it is the moment for Europe to understand we should show real ambition about recognising that what is happening in North Africa is a democratic awakening, and we should be encouraging these countries down a democratic path’.⁶

However, Article 2(7) of the UN Charter⁷ does not allow the organisation to intervene in matters that essentially fall within the internal sovereignty of a country.⁸ This restriction reflects a core principle of international law: the principle of non-interference. The principle of non-interference applies not only to the relationship between the UN and independent

⁶ Joe Murphy. ‘EU Leaders Fail to Agree Action Plan for Libya’ London Evening Standard (London, 11 March 2011) <<http://www.thisislondon.co.uk/standard/article-23931030-give-up-power-immediately-eu-prepares-gaddafi-ultimatum.do>> accessed 11 March 2011.

⁷ Charter of the United Nations (UN Charter) (24 October 1945) 1 UNTS XVI art 2(7).

⁸ Sovereignty has been associated with both traditional and historical concepts and is viewed primarily in two dimensions. First is internal sovereignty in which the legislative, judicial and executive governmental institutions can exercise their rights without oversight from high-level authorities. Second, external sovereignty leaves nation-states free to handle their international relations and participation posts and make related decisions. Since the seventeenth century, the international system of sovereign countries has developed around a number of customary or written rules. The 1648 Treaty of Westphalia formed a foundation of international law outlining the core features of sovereignty. However, the concept of sovereignty today is not restricted by the specific settlements of Westphalia. The objective criteria used in international law to establish the concepts of jurisprudence and sovereignty were formed largely in the eighteenth and nineteenth centuries. During those centuries, the concepts of territorial sovereignty, formal equality among countries and non-interference in the internal affairs of other countries gradually formed the basis for the notion of international legal obligations, which has become a fundamental principle of the international community.

countries, but also to relationships among all countries.⁹ Its validity is confirmed in many documents and international agreements created after the Second World War, and in resolutions of the UN General Assembly such as Resolution 2131, which calls for non-interference in the internal affairs of countries.¹⁰ Its validity is confirmed in other documents and international agreements created after the Second World War, and in resolutions of the UN General Assembly such as Resolution 2131, which calls for non-interference in the internal affairs of countries.¹¹ Therefore, it has become difficult for any specific international body or a member of the international community to carry out military attacks (contrary to Article 2 (4) UN charter on use of force),¹² economic or rhetorical interventions without being subjected to challenges and questions regarding the legality of such interventions and the motivations underpinning any such actions. Therefore, this thesis will consider the implications of these core principles of international law.

2. The Scope of Study

This thesis examines the impact of the principle of non-intervention on the operation in international law of the right to political self-determination. The arguments behind these theories are that the right to political self-determination is based on the claims of the populaces within dictatorial states, which ought not to be suppressed. The international community, on the one hand should support such demands and protect the people from repression, human rights abuses and violence within the framework of international law, on the other hand, such promotion, support and protection could be contrary to the principle of non-interference. Thus, a conflict exists in international law, between the need to promote the peoples' rights of self-determination and the principle of non-interference, enshrined within the UN Charter. This thesis will therefore critically evaluate all relevant principles and proffer ambitious solutions in line with recent developments within the committee of Nations and the ever emerging Public International Law principles.

⁹ Anthony F. Lang, *Just Intervention*, Georgetown University Press 2003, p. 64.

¹⁰ Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, United Nations General Assembly Res 2331 (1965) <<http://www.un-documents.net/a20r2131.htm>> accessed 13 July 2011.

¹¹ Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, United Nations General Assembly Res 2331 (1965) <<http://www.un-documents.net/a20r2131.htm>> accessed 13 July 2011.

¹² UN Charter (1945).

3. Aims of Study

The main objective of this research is to study the impact of the principle of non-interference on the remarkable development of the right to political self-determination. Although, the Principles of rights to self determination and non-interference border between law and politics, the Aim of this study is to approach these concepts from a legalistic viewpoint; discuss an overarching perspective, by analysing in what ways does self determination fall short of international law in theory and practice and how can we regenerated the right to guarantee a wider enforcement/acceptance?

In so doing, examining contemporary situations of the principle of non-interference within the scope of international practice and modern legal rules to determine the rigidity of this principle and the extent to which it is incompatible with international trends in the promotion of the political rights of peoples living under a range of repressive regimes.

The right to political self-determination has several critical points of tension with international law, but the demand for democratic rights and freedoms emerges from dictatorial states or repressive regimes that resist the merits and suppress all demands to facilitate them to the advantage of the principle of non-interference essentially for reasons of incompatibility. With this in mind, this thesis further aims to uncover the truth in the issues arising from the conflict between the right to political self-determination and the principle of non-interference and to validate whether a global/uniform standard of international law is attainable by the hierarchical relationship between international and national legal frameworks.

4. Research Question

The central question of this research is: ‘Does the principle of non-interference impact on the path of the right to political self-determination in international law?’

Other relevant sub-questions within this thesis are as follows:

- (1) Is there a legal basis for popular claims that dictatorship can be ended and the highest degree of good governance achieved through effective public participation in national decision-making?
- (2) If the legal basis described in question 1 exists, is there harmony or dissonance between the right to political self-determination and the criteria of statehood in international law?
- (3) If the right to political self-determination is linked to international intervention, because dictatorial governments resort to repression and military means to suppress popular demands, how can 'international intervention' be legally defined?
- (4) If international intervention promotes the right to political self-determination in a manner that conflicts with the principle of non-interference, what is the current status of the principle of non-interference, given the contemporary focus on human rights?
- (5) Are there special criteria for international interventions to promote the right to political self-determination?
- (6) What is the outcome of the conflict between the right to self-determination and the principle of non-interference? What debate surrounds these issues?

5. Methodology

Whilst this thesis generally considers two main areas of international law: the right to political self-determination and the principle of non-interference, to effectively understand the influence of these principles and arrive at evidence-based results, the thesis will engage a doctrinal approach combining textual analysis with case studies of international interventions involving emerging issues on the right to political self-determination. Theoretically, the research progresses towards analysing the uncertainty in implementing, interpreting and applying international laws and relevant human rights instruments, through the examination of the extent of practice of the principle of political self-determination and the doctrine of non-interference, the research further examines the scope of state sovereignty theoretically and practically on the parameters and duties of States to honour the right to self-determination by identifying arguments within primary and secondary sources on the topic, locating determinative facts and legal issues.

The data used for analyses consists of Treaties, Resolutions, statutes, judicial pronouncements, relevant journals, leading texts, legal reviews, other materials predominantly from judges, lawyers, practitioners and legal scholars have been reviewed and examined including legal principles which govern the practice of international and human rights law. The thesis therefore stresses the need for nationalisation of international laws. Finally, this study is multi-faceted, while it is majorly a legalistic argument it does embrace aspects of socio-political science, political / economic empowerment and philosophy, with proper analyses conducted and conclusions reached.

6. Thesis Outline:

Chapters 1 and 2 aim to address the importance of ensuring that the right of political self-determination in international law is a legal right in the framework of the legal concepts of self-determination for all people. These chapters will also address the concern that the legal concept of statehood has no effect on the claim of this right.

The first chapter reviews the innovative development of the right of political self-determination in international law. The chapter begins by examining the right of self-determination in general in order to understand the differences and similarities between the popular demands that affect this right. Accordingly, this chapter seeks to investigate whether the popular demand for this right is consistent with the legal concepts of self-determination. This chapter will serve to clarify the scope of the right to political self-determination in legal concepts, both in terms of external self-determination and internal self-determination. Thus, it seeks to provide an understanding of the factors that influence the emergence of this right in terms of the place and circumstances surrounding it. Additionally, it looks at the factors that influence the deactivation or termination of the popular demands of this right, which contributes to understanding the phenomena and concepts that encourage the international community to strengthen this right through international intervention.

Chapter two looks at the dynamics between the right of political self-determination and the concept of statehood in international law. Because this right cannot be achieved without any change in the internal shape of the state, this change or the popular claims of this right must be consistent with the criteria of statehood in international law. Moreover, this chapter provides an objective analysis of the new elements in the international recognition of the

change in internal forms of the state and it demonstrates the direct impact that the right of political self-determination has on the development of those elements. This analysis examines the ability of this right to be consistent with the ideology of contemporary international law in order to ensure that this claim does not depart from that ideology, which is based on a concern for human rights and the rights of all people.

Chapter three will provide a critical analysis of the concept of intervention in international law. The aim of this analysis is to identify the legal restrictions that prevent international intervention. This chapter will be divided into two basic sections. Part I will examine the concept of international interventions in international conventions and customary international law. Part 2 will examine the principle of non-interference as the main constraint that prevents the international community from intervening if doing so interferes with contemporary legal thought. The most important part of this chapter will be devoted to the study of the current status of the principle of non-interference; this section will consider the rigidity of this principle in light of contemporary interests in human rights and the rights of all people.

Chapters 4 and 5 present specific studies that have examined the concept of international intervention. In particular, they will examine if the concept has been used to promote the right of political self-determination. The information presented in these chapters will reflect the contemporary interest in the promotion of the right to political self-determination through international intervention within the framework of jurisprudence of international law and international practices. Therefore, these chapters will present an analysis of the results of the confrontation between this promotion and the principle of non-interference.

Chapter 4 will provide a legal analysis of the concept of international intervention to promote the right of political self-determination. It will achieve this through the study of this type of intervention in international law. This chapter will also clarify the differences and similarities between interventions that aim to strengthen the right of political self-determination and interventions that aim to protect against human rights violations. Moreover, this chapter will discuss the legal pillars upon which this type of intervention is based, as well as the legal restrictions that affect the validity of this intervention in the framework of international law.

Chapter 5 will examine actual cases of international interventions and practices that promote the right of political self-determination. This study is an important contribution to the endeavour to clarify the application of international efforts to promote the right of political

self-determination. Additionally, it is necessary to explore the results of the confrontations that have occurred between the right of political self-determination and the principle of non-interference around the issues that have emerged in the effort to claim this right. This chapter will illustrate the stability of the support to promote this right in customary international law. This chapter will be divided into two sections. The first section will examine some of the international interventions that were used to promote this right during the Cold War. The second section will examine some of the international interventions that were used to promote this right after the end of the Cold War, in order to understand the evolution and expansion of the support and promotion of the right to political self-determination in international law after the end of the Cold War era.

Chapter six is the final chapter and summarises the previous five chapters, with a focus on the outcome of this thesis. More importantly, this chapter highlights the contributions that this research makes to the field of study and recaps the findings of the research that emerged throughout the study period.

Chapter one

The Right of Political Self-Determination in International Law

1.1 Introduction

Modern legal climates have contributed to the development, spread, agitation and emergence of the right of political self-determination.¹³ Despite the existence of the right of political self-determination in many international conventions, a rapprochement is when people are calling for the independence of the state, a criterion of popular demand which appears mainly to be regarded as a call for political self-determination.¹⁴

Thus, the new approach of self-determination is centred on the claim of political self-determination to end the dictatorship and the people's participation in decision making and to choose the type and style of government in running the country.¹⁵ However, this approach has not received a lot of attention from legal studies. Most studies examining political self-determination have focused on human rights in general and have looked more specifically at democracy. There are still many questions to be answered about the sources of the right to political self-determination in international law, including the standards on which this right is based and their connection to the concept of self-determination.

In addition, one must know the difference between traditional claims to self-determination and the new approach to political self-determination. This approach differs in terms of the importance of popular demand through its association with dictatorial governments and repressive regimes. This links to another legal area, which is the concepts and legal principles for international intervention, in particular the principle of non-interference. Because these regimes will not hesitate to repress or kill citizens who demand access to the right of political

¹³ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review*, Volume 57, 2010. See also Jure Vidmar, *The Right of Self-determination and Multiparty Democracy: Two Sides of the Same Coin?* *Human Rights Law Review* (2010) Vol. 10, No. 2, pp. 239-268. See also Jure Vidmar, *Democratic Statehood in International Law : The Emergence of New States in Post-Cold War Practice*, Hart Publishing Limited, 2013, pp 10-38.

¹⁴ Karen Knop, *Diversity and Self-Determination in International Law*, Cambridge University Press, 2002, pp. 20, 65.

¹⁵ David J. Galbreath, 'Dealing with Diversity in International Law: Self-Determination and Statehood', *The International Journal of Human Rights* (2005) Vol. 9, No. 4.

self-determination. International law criminalizes this repression and supports the political rights of all people. How does the right to political self-determination arise within the state, and what are the characteristics that link this right to the concept of international intervention?

The primary focus of this chapter is to examine the right to political self-determination in international law and to determine whether there exists any legal way for international legislation to impact the path of this right. This chapter also looks at the legal consistency required to strengthen the right to political self-determination within the framework of international law. In addition, this section analyses the link between this right and the concept of international intervention.

Consequently, this chapter provides a legal analysis to understand the correlation of the political rights of peoples with the concept of self-determination, through the study of the right of self-determination in international law. It traces the emergence of the right of political self-determination to ensure that it is proven in international law. In addition, this chapter clarifies some of the fundamental characteristics that play a part in the interaction between the right to political self-determination and the concept of international intervention.

1.2 The concept of self-determination

Broadly stated, the right of self-determination is one of the most important rights established in the jurisprudence of modern international law. The right of self-determination can be defined as ‘the right of all peoples to determine their political future and freely pursue their economic, social and cultural rights. This is reflected through independence as well as local self-government and autonomy and integration, association, or some other forms of participation in government, all working externally and internally to ensure democratic governance’.¹⁶

The right to self-determination is fundamental to the popular demands of citizens, whether intellectual, regional or ethnic, and finds realisation in the people’s ability and freedom to determine the overall shape of their state. In this sense, self-determination refers to the

¹⁶ A. A. Idowu, *Revisiting the Right to Self-Determination in Modern International Law: Implications for African States*, *European Journal of Social Sciences* (2008) Vol. 6, No. 4.

freedom of the members of a group to determine their political status and thus to pursue social, cultural and economic development.¹⁷

Thus, the right to self-determination complements the right of free speech, upon which the freedom of the people is based. The importance of language to self-determination suggests that self-realisation of the people can be in line with the desire to achieve a sense of nationalism, either politically or culturally. It is important to note that realising the claim to self-determination is an on-going process which does not cease until the people achieve their desired freedom. It does not depend directly upon individual concerns but is driven primarily by the popular desires of the population of a state or province.¹⁸

The moral theory of international law has contributed to the development of this right because this theory ranks justice high as a standard of respect for fundamental human rights and dignity and of equality among all human beings.¹⁹ In addition, the remarkable modern developments in the rules of modern international law aided in the formulation of the essential features of this right, particularly freedom of association, belief and thought and freedom from persecution, murder and displacement. These freedoms are reflected in much relevant legislations and the common interest in collective action to establish and develop self-determination in a growing number of countries.²⁰

1.3 The rise of self-determination in international law

Before studying the legal framework of self-determination, we need to review the history of this right to its current stage in order to understand the causes of the various threads of this right and its broader applications. Despite the tendency of scholars and researchers to consider self-determination as a novelty and to link it to international covenants and conventions, this right has been enshrined in the literature of customary law for a long period of time. The genesis of this right in the Middle Ages can be seen as a revolutionary reaction to the concept of divine right and to governors of provinces who dominated their inhabitants

¹⁷ James Summers, *The Rhetoric and Practice of Self-Determination: A Right of All Peoples or Political Institution*, *Nordic Journal of International Law* (2004) Vol. 73, No. 3, pp. 323-361.

¹⁸ *Ibid.*

¹⁹ Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford University Press, 2003, pp. 16-19.

²⁰ Hawraman Ali, *Self-determination for the Kurds?* *Coventry Law Journal* (2011) Vol. 16, No.1, pp. 29-41.

and held authority above the law.²¹ Over time, these conditions have pushed the development of this right in the direction of ever-greater popular authority, taking the possession of state authority from individuals such as governors. This historical shift can be seen to crystallise in the United States' Declaration of Independence in 1776, the outbreak of the French Revolution in 1789²² and subsequent documents pronouncing human rights to be an element of just government.²³

During the nineteenth century, a significant shift occurred regarding this right when US President James Monroe declared that South American countries had a right to self-determination in response to a fear of European interference in the internal affairs of those states.²⁴ At the same time, Europe saw a similar movement against the tyranny of kings and the ruling classes (e.g., the French Revolution) which solidified concepts of this right and its implications for the rights of individuals and peoples. Put briefly, these rights include the rights to enjoy freedom, resist oppression and define, according to one's own principles of governance, the internal and external construction of the state.²⁵ From this movement emerged democratic governance and the concrete concept of the right of self-determination.

In 1914, Vladimir Lenin wrote the *Right of Nations to Self-Determination*, the first scientific work dealing with this right which caused a significant shift in its conception.²⁶ During the explosive conflict of World War I, the Allies, in response to a letter from US President Woodrow Wilson, asserted that they were fighting for the freedom and independence of Italy and the Czech Republic and to liberate the oppressed peoples of other various European countries from foreign control.²⁷ However, at this time, the right of self-determination conflicted with other established legal rights and consequently was rejected in the international consultations and negotiations during the period.

²¹ Karen Knop, *Diversity and Self-Determination in International Law*, Cambridge University Press, 2002, p. 166.

²² Shyamoon Jayasinghe, *The Future of Self-Determination*, *Contemporary Review* (2002) Volume 28.

²³ Anne F. Bayefsky, *Self-determination in International Law: Quebec and Lessons Learned: Legal Opinions*, Martinus Nijhoff Publishers, 2000, p. 387.

²⁴ Andrew Gray, *Indigenous Rights and Development: Self-Determination in an Amazonian Community*, Berghahn Books, 1997, p. 48.

²⁵ Joshua Castellino, *International Law and Self-determination*, Martinus Nijhoff Publishers, 2000, p. 11.

²⁶ Omar Dahbour, *Illusion of the Peoples: A Critique of National Self-Determination*, Lexington Books, 2003, p. 48.

²⁷ David Wippman, *International Law and Ethnic Conflict*, Cornell University Press, 1998, p. 8.

In short, during most historical periods, the right of self-determination has been in opposition to the aspirations of major countries. During the period under discussion, the spread of colonialism had marginalised the right to self-determination. Consequently, it was not addressed in the negotiations of international legislation or included as an established right in the charter of the League of Nations.²⁸

The process of implementing the right of peoples to self-determination did not stop with efforts to redress colonialism which prevailed in the eighteenth and nineteenth centuries²⁹ but extended to responses to the outcome of World War II and to the Cold War. This process can be seen in the establishment of the Federation of Germany, the disintegration of the Yugoslavian Federation and, most significantly, the emergence of many independent states countries after the collapse of the Soviet Union in the 1990s. These events all stand as good examples of the application of the right of peoples to self-determination.

Despite the denial of the right to self-determination during the era following the First World War, it did play a certain role after the Second World War during negotiations by the Allied Quartet of the United States, Britain, France and the Soviet Union, held in San Francisco in 1945. At this time, Vyacheslav Molotov, the Soviet Union's minister of foreign affairs, proposed this right be included in the texts of the UN Charter.³⁰

The conference endorsed these amendments, which then became paragraph (2) of Article I of the first chapter of the UN Charter setting out the objectives and principles of the organisation: 'to develop friendly relations among nations based on respect for the principle of equal rights and the self-determination of peoples, and to take other appropriate measures to strengthen universal peace'. In addition, Article (55) of the UN Charter has described the organisation as founded 'with a view to the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and the self-determination of peoples'.³¹

²⁸ Nazila Hercock, Alexandra Xanthaki, Patrick Thornberry, *Minorities, Peoples, and Self-determination: Essays in Honour of Patrick Thornberr*, Martinus Nijhoff Publishers, 2005, p. 37.

²⁹ Jure Vidmar, *The Right of Self-determination and Multiparty Democracy: Two Sides of the Same Coin?* *Human Rights Law Review* (2010) Vol. 10, No. 2, pp. 239-268.

³⁰ Katarina Mansson, *Reviving the 'Spirit of San Francisco': The Lost Proposals on Human Rights, Justice and International Law to the UN Charter*, *Nordic Journal of International Law* (2007) Vol. 76, pp 217-239.

³¹ Antonio Cassese, *Self-determination of Peoples: A Legal Reappraisal*, Cambridge University Press, 1998, p. 41.

Thus, it is clear that the right of self-determination has become increasingly sophisticated, which has forced governments to support more broadly the legality of people's demands for this right. Furthermore, the historical legal and political practices of the international community, by both states and international organisations, have confirmed the right of self-determination as one of the most important means of exercising the rights established by the principles of contemporary international law.³²

1.4 The right of self-determination in contemporary international law

After the end of World War II, an intellectual movement to respect human rights and make them, and particularly their legal aspects, central to intellectual dialogue began among scholars and politicians.³³ This development secured the importance of people's human right to self-determine their national and political destiny in international law. Undoubtedly, the international practices and organizations have played a prominent role in the evolution of international law;³⁴ thus, we can clearly say that international law is based on the deepest aspirations of the human mind, placing the human mind and its interests and orientations in control of practices.³⁵ This claim is confirmed by the worldwide intellectual revolution that has led to the legal renunciation of violence and hatred as instruments of policy and the direction to legally regulate international activities through treaties and conventions.

Among the numerous international conventions and international and regional instruments dealing with the right to self-determination, the most important are the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples³⁶ and the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among

³² Heike Krieger, *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*, Cambridge University Press, 2001, p.23.

³³ A. A. Idowu, *Revisiting the Right to Self-Determination in Modern International Law: Implications for African States*, *European Journal of Social Sciences* (2008) Vol. 6, No. 4.

³⁴ Brian Beary, *Separatist Movements: Should Nations Have a Right to Self-determination ?* *The Congressional Quarterly Global Researcher* (2008) Vol. 2, No. 4, pp. 85-114. See also Susan Marks, *What has Become of the Emerging Right to Democratic Governance?* *European Journal of International Law* (2001) Vol. 22, No. 2 pp.

³⁵ Thomas Grant, *The Recognition of States: Law and Practice in Debate and Evolution*, Greenwood Publishing Group, 1999, pp 83-140.

³⁶ Edward McWhinney, *The Declaration on the Granting of Independence to Colonial Countries and Peoples 1960* (<http://untreaty.un.org/cod/avl/ha/dicc/dicc.html>); accessed on 09/08/2011.

States, adopted by the UN General Assembly in 1970.³⁷ Other important milestones include the 1948 Universal Declaration of Human Rights,³⁸ 1966 International Covenant on Civil and Political Rights,³⁹ 1981 African Charter on Human and Peoples Rights⁴⁰ and 1990 Document of the Copenhagen Meeting on the Human Dimension of the CSCE,⁴¹ as well as numerous other international treaties and conventions.

Moreover, the ICJ has supported the global trend to enshrine self-determination as a legal right in international law.⁴² In many cases, the court has backed unequivocally and unconditionally those demanding the right to self-determination. The court did so, for instance, in its 1995 judgment in the case of East Timor,⁴³ its decision in the Namibia case of 1971⁴⁴ and 16 October 1975 statement on the issue of Western Sahara.⁴⁵

As well, the Court of Justice has focused on many international issues affecting the desire of peoples for self-determination. For example, we can read in an advisory opinion issued 9 July 2004 the court concluded that the Israeli government's construction of a wall in the Occupied Palestinian Territories, 'along with measures taken previously, severely impedes the exercise

³⁷ The Principle of Equal Rights and Self-Determination of Peoples in the Declaration of Principles of International Law Concerning Friendly Relations and Cooperation among States (1970) <<<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>>> accessed 9 August 2011.

³⁸ Universal Declaration of Human Rights (1948).

³⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) article 1.

⁴⁰ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) <<http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf>> accessed 1 August 2011.

⁴¹ Organization for Security and Co-operation in Europe (OSCE), 'Document of Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990)' <<http://www.osce.org/odihr/elections/14304>>> accessed 6 August 2011.

⁴² Gentian Zyberi, Self-Determination through the Lens of the International Court of Justice, *Netherlands International Law Review* (2009) Vol. 56, pp 429-453.

⁴³ East Timor case, ICJ judgment, 30 June 1995, available at (<http://www.icj-cij.org/docket/index.php?sum=430&p1=3&p2=3&case=84&p3=5>) accessed 05/07/2014. See also Karen Knop, *Diversity and Self-Determination in International Law*, Cambridge University Press, 2002, p. 190.

⁴⁴ Namibia case, ICJ judgment, 13 December 1999, available at (<http://www.icj-cij.org/docket/index.php?sum=505&p1=3&p2=3&case=98&p3=5>) accessed 05/07/2014. See also David Raic, *Statehood and the Law of Self-determination*, Martinus Nijhoff Publishers, 2002, p. 196.

⁴⁵ Western Sahara case, ICJ Advisory Opinion, 16 October 1975, available at (<http://www.icj-cij.org/docket/index.php?sum=323&p1=3&p2=4&case=61&p3=5>) accessed 05/07/2014. Also see Gentian Zyberi, Self-Determination through the Lens of the International Court of Justice, *Netherlands International Law Review* (2009) Vol. 56, pp 429-453.

by the Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right'.⁴⁶

Collectively, these instruments and international conventions build the physical and moral meaning of peoples' right of self-determination, thereby establishing precedents in contemporary international law. The language of this law acknowledges that this right derives its strength from peoples' desire to achieve a national and political destiny. A 1991 international meeting of experts reached this conclusion while clarifying the concepts of the rights of peoples in order to recognise them in international law.⁴⁷

Michla Pomerance discussed the right of self-determination as a rule in international law and said that states' practice of participating in international conventions dealing with the rights of peoples is sufficient to establish the correct formula for their practice in customary law. Moreover, he points out, the focus on this right in international discussions and negotiations and the emphasis placed on it in the instruments and international conventions has made it an important legal foundation and rule of law in international law.⁴⁸

However, the right of self-determination clearly remains a thorny issue in international law,⁴⁹ especially so for international lawyers. Fundamental questions about this right's legal nature and how it can be put into practice legally are impossible to avoid. The limits of its application can be questioned, and a single formula to identify who comprises 'the people' who possess the right of self-determination is needed.

⁴⁶ Hawraman Ali, Self-determination for the Kurds? *Coventry Law Journal* (2001) Vol. 16, No.1, pp. 29-41.

⁴⁷ UNESCO Division of Human Rights Democracy and Peace and the UNESCO Centre of Catalonia, 'Report of the International Conference of Experts Held in Barcelona from 21 to 27 November 1998 about The Right of Self-Determination' (International Conference of Experts) <<http://www.unpo.org/article/446>> accessed 26 September 2011.

⁴⁸ Colin Warbrick, Self-determination in Law and Practice, *International and Comparative Law Quarterly* (1983) Vol. 32, pp. 542-543.

⁴⁹ Malgosia Fitzmaurice, Book Review, Indigenous Rights and United Nations Standards, Self -Determination, Culture and Land for Alexandra Xanthaki, *European Journal of International Law* (2008) Vol. 19, No. 4, pp. 859-862.

1.4.1 Legal nature of the right of self-determination

The right of self-determination does not differ from other human rights enacted by modern international law,⁵⁰ especially in the Universal Declaration of Human Rights.⁵¹ In particular, the right of self-determination represents the popular will of a nation's citizens and has all the features and advantages of the other human rights. The right of self-determination perfectly complements the increasing global interest in human rights and enshrines giving priority to the interests of humanity over those of governmental agencies.⁵²

In general, contemporary international law consists of a system of rules that govern the relationships among countries and were formed mostly after the founding of the UN of 1945.⁵³ An important part of the work of contemporary international law has been the development of human rights, extending in the laws' obligations and protection to include individuals. The law thus protects the fundamental freedoms and human rights of individuals and supports peoples' natural claim and legal right to self-determination.

As well, Christian Tomuschat emphasises, the international human rights movement aims to create a general recognition that states no longer are the only subjects of international law and that the main purpose of the state is to provide services to its citizens.⁵⁴ If any state fails to fulfil this basic responsibility, it likely will lose its legitimacy. These responsibilities extends to the failure to protect the lives and physical integrity of its citizens, even to the all-too-frequent cases in which state organs become transformed into organs of terror that oppress certain groups of the population. In these cases, such groups are not held obliged to remain within the borders of that country.⁵⁵

International humanitarian laws and treaties support the idea that self-determination is a natural right protected by law because modern human rights law provides the legal means to protect the fundamental freedom of the populace to pursue social, economic and political opportunities, both individually and collectively. It can be argued that the starting point for

⁵⁰ Jure Vidmar, *The Right of Self-determination and Multiparty Democracy: Two Sides of the Same Coin?* *Human Rights Law Review* (2010) Vol. 10, No. 2, pp. 239-268.

⁵¹ Robin C. A. White, *Self-determination: Time for a Re-Assessment?* *Netherlands International Law Review* (1981) Vol. 28, No. 02, pp. 147-170.

⁵² Kapitan Tomis, *Self-determination and international order*, *The Monist* (2006) Vol. 89, No. 2, pp. 356-370.

⁵³ Hawraman Ali, *Self-determination for the Kurds?* *Coventry Law Journal* (2011) Vol. 16, No.1, pp. 29-41.

⁵⁴ Christian Tomuschat, *Modern Law and Self-Determination*, Martinus Nijhoff Publishers, 1993, p. 9.

⁵⁵ A. A. Idowu, *Revisiting the Right to Self-determination in Modern International Law: Implications for African States*, *European Journal of Social Sciences* (2008) Vol. 6, No. 4.

human rights and the right of self-determination is the protection of rights, whether individual or collective. Kapitan Tomis argued that collective self-determination is the best way to protect the human rights and improve the quality of life of a country's populace and that the right to self-determination means the freedom of all individuals to participate meaningfully in decisions concerning the sovereignty over the territory in which they lives.⁵⁶

However, the right of self-determination goes a step beyond individual human rights and grants a number of rights necessary to maintain the identity of a particular group. These rights involve positive obligations upon the international community, such as the duty to respect the cultural heritage of various ethnic groups. In addition, it must be pointed out that the right of self-determination is not an absolute right without any restrictions; unlike absolute rights, which are gradated by the formulation of jurisprudence, the purpose of the right of self-determination is not to protect the personal, physical safety of groups or individuals and can involve significant changes to the structural and institutional constitution of any state.⁵⁷

Despite these differences, self-determination is treated as a human right and not as a political principle in this research. Even where this right is guaranteed to all peoples on the basis of equality, its outcomes have some limitations.⁵⁸ Many references to the right of self-determination occur in instruments of international or human rights, such as Part VIII of the 1975 Helsinki Final Act,⁵⁹ Article 20 of the 1981 African Charter on Human and Peoples' Rights⁶⁰ and the 1990 Paris Charter for a New Europe.⁶¹

In addition, certain UN bodies are dedicated to human rights. For instance, the UN High Commission for Human Rights and the Committee on the Elimination of All Forms of Racial Discrimination have issued many reports and rules on the scope and content of the right to self-determination within their respective areas of responsibility. Take, for example, the UN

⁵⁶ Kapitan Tomis, Self-determination and international order, *The Monist* (2006) Vol. 89, No. 2, pp. 356-370.

⁵⁷ Jure Vidmar, The Right of Self-determination and Multiparty Democracy: Two Sides of the Same Coin? *Human Rights Law Review* (2001) Vol. 10, No. 2, pp. 239-268.

⁵⁸ *Ibid*

⁵⁹ Conference on Security and Co-operation in Europe, 'Helsinki Final Act 1975' (Helsinki) Part VIII <<http://www.hri.org/docs/Helsinki75.html>> accessed 20 July 2011.

⁶⁰ African Charter, art 20 <http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf> accessed 1 August 2011.

⁶¹ Paris Charter for a New Europe 1990 <<http://www.osce.org/mc/39516>> accessed 26 August 2011 .

High Commission for Human Rights report No. S/2006/817, which supports the right of self-determination in Western Sahara.⁶²

The right of self-determination evolved conceptually through the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights,⁶³ Oslo Declaration of 1970,⁶⁴ and Vienna Declaration of 1993.⁶⁵ This latter document gave the right of self-determination an important legal character by stipulating the international obligation to fulfil collective demands, to not raise barriers and pitfalls to these demands and to support and encourage the realisation of popular demands to the right of self-determination.⁶⁶ These goals are to be achieved through the international community's recognition of a particular group as a 'people' entitled to self-determination under international law. The ICJ documented this legal obligation in the case of East Timor (Portugal v. Australia), ruling that the right of self-determination 'is one of the fundamental principles of contemporary international law.'⁶⁷

It is important to note the strong tone of UN General Assembly resolution 2625, passed in 1970, which gave a country's citizens the right to use all the state's legal powers to exercise the right to self-determination and committed the organisation to make use of these legal mechanisms to support and assist such struggles. This decision indicates the ending of the control by the dominant authorities and colonial powers and the early establishment of an opportunity for a nation's people to freely express their will. This resolution also established the principle that the presence of a colonial power and a dominant power in legal judgments is contrary to the principle of peoples' right to self-determination and the provisions of the UN Charter.⁶⁸

⁶² UNSC 'Report of the Secretary-General on the Situation Concerning Western Sahara 2006'
<<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/MINURSO%20S2006817.pdf>> accessed 28 October 2011.

⁶³ Antonio Cassese, *Self-determination of Peoples: A Legal Reappraisal* (Cambridge University Press, 1998) p. 41.

⁶⁴ Declaration of Principles On Interim Self-Government Agreements between Israel and the Palestine Liberation Organisation (Oslo, 1993).

⁶⁵ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review* (2010) Vol. 57, pp. 29-72.

⁶⁶ UNGA Vienna Declaration (1993)
<[http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)> accessed 10 July 2011.

⁶⁷ East Timor case, ICJ judgment, 30 June 1995, available at (<http://www.icj-cij.org/docket/index.php?sum=430&p1=3&p2=3&case=84&p3=5>) accessed 05/07/2014.

⁶⁸ UN, The General Assembly, Resolution No. 2625 (1970).

Helen Quane has said that the claim that the application of the legal obligation to support self-determination to steps is a crucial step in the literature because, unless applied to countries, this right will be seen as a mere re-formulation of the principle of sovereign equality under international law.⁶⁹ This latter approach is defective as it gives the impression that, when the legal obligation to the right of self-determination lies within the domestic jurisdiction of states, it has a narrow and limited range. Thus, any relevant decisions or recommendations by the UN and regional and international organisations would violate of a country's sovereignty.

On the contrary, recognising support of the right of self-determination as an international responsibility of the state sets a lofty goal for this and all other human rights. Additionally, ensuring the maintenance and protection of humans and enabling the active participation of individuals in public life is a basic objective of all international regulations.

1.4.2 Limits of the application of self-determination

The stability of the legal doctrine for the right of self-determination rests upon two types of claims by the people. First, the right of external self-determination means the right of a nation's entities (e.g., states, provinces, etc.) to exercise sovereign independence free from external colonialism or, through secession from an undesired union, to form a different union based on shared identities defined by the people. Second, the right of internal self-determination means the freedom of the nation to organise its internal political and economic affairs and social and cultural rights; therefore, enjoyment of the right of determination is limited to those countries possessing full sovereignty.⁷⁰

However, the objective of diversity in international conventions and instruments on the right of self-determination and the narrow interpretation of this right in Articles 2 and 55 of the UN Charter have contributed to controversy over who enjoys the right to self-determination.

⁶⁹ Helen Quane, *The United Nations and the Evolving Right to Self-Determination*, *International and Comparative Law Quarterly* (1998) Vol. 47, pp. 537-572.

⁷⁰ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review* (2010) Vol. 57, pp. 29-72.

That is, is such a right due to all peoples, to the colony of a dominant power, or to the minorities in a country?

This question raises others such as: Does international law set a standard for the right and legitimacy of the claim of the right to self-determination? Until recently, this position was rejected, and international law was considered to be the province of the state which, as a representative unit, was active and influential in the international arena and thus denied any claims against the popular political unity and territory of any countries. However, the emergence of laws and conventions on human rights has changed dramatically this reality, with the individual and the group gradually taking on the role of the primary rational and influential actors in the international arena. This change has supported the formal definition of the right of self-determination.

In the same context, we find a lack of consensus on the legal value in the concept of self-determination. In the various debates about the concept in the writings of David Rick, Cassese and Buchanan, the absolute value of self-determination has not been specified as an absolute value, except in discussions of colonial peoples. This deficiency becomes more evident when considering instances in which groups that secede from an existing national entity lose the absolute value of the right to self-determination. For example, in the case of Kosovo, the contending parties resorted to armed conflict, contrary to the main objective of the UN Charter to achieve international peace and security and the modern intellectual trend to reject violence and murder.

Moreover, the right to self-determination through secession has conflicted with many legal principles settled in international jurisprudence and conventions. These principles have received great support and been highly documented in the literature on international legal frameworks. Among these, the most important is the principle of territorial integrity.⁷¹ This principle seeks to preserve the state's borders within a framework of realism and legal forms against any threat to break apart a country or changes the regional borders of a state. This principle has been enshrined in international law in order to maintain the sovereignty of the country and maintain the prohibition on the use of armed force in international relations.⁷²

⁷¹ Ralph Wilde, *Self-determination, secession, and dispute settlement after the Kosovo Advisory Opinion*, *Leiden Journal of International Law* (2010) Vol. 24, pp. 149-154.

⁷² Karen Knop, *Diversity and Self-Determination in International Law*, Cambridge University Press, 2002, pp. 74-75.

Many international conventions and treaties reference this principle. For example, Article 1 (1) of the UN Charter aims to maintain security and international peace by eliminating any reasons that could threaten the peace. As well, Article 2 (4) prohibits threats or the use of force against the territorial integrity or political independence of any state or any other action inconsistent with the purposes of the UN in international relations. Finally, Article 33 calls for peacefully resolving any threat to international peace and security.⁷³

Although the doctrine and legality of the principle of territorial integrity and of the right of self-determination in the event of secession have been analysed widely, the principle of *Uti possidetis* more severely restricts the right to self-determination.⁷⁴ This principle is often invoked by those who seek to resolve the historical legacy of colonialism by prohibiting any changes to the borders of states once independent of colonial power. This principle can serve in an attempt to find a smooth path in the jurisprudence of international law to prevent border disputes,⁷⁵ especially in formerly colonial areas of Africa, Asia and South America. This principle became one of the important criteria in customary international law adopted by the peoples of Latin America who won their independence from Spanish colonialism in the early nineteenth century. This principle has worked to preserve the national borders inherited from colonisation by independent countries. This result is only logical, considering that all the lands of South America are claimed, and there is no free land that does not belong to a country.⁷⁶

An important legal opinion from the ICJ mentions this principle when considering the case against Burkina Faso and Mali.⁷⁷ Specifically, this finding states that ‘the essence of the principle lies in its primary aim of securing respect for the territorial boundaries at the moment when independence is achieved. Such territorial boundaries might be no more than delimitations between different administrative divisions or colonies all subject to the same sovereign’. Therefore, the managerial boundaries from colonisation became the national

⁷³ UN Charter (1945).

⁷⁴ Patrick Muwunguzi, *Reconciling Uti Possidetis and Self-Determination: The Concept of Interstate Boundary Disputes*, King's College London, 2007.

⁷⁵ John W Donaldson, *Perceptions of legal and geographic clarity: Defining international land boundaries in Africa*, Chapter 1; *Essay in African Land Law*, Pretoria University Law Press, 2011, pp. 1-24.

⁷⁶ Jonathan D. Rechner, *From the OAU to the AU: A Normative Shift with Implications for Peacekeeping and Conflict Management, or Just a Name Change?* *Vanderbilt Journal of Transnational Law* (2006) Volume 39.

⁷⁷ John W Donaldson, *Perceptions of legal and geographic clarity: Defining international land boundaries in Africa*, Chapter 1; *Essay in African Land Law*, Pretoria University Law Press, 2011, pp 1-24

boundaries of the independent state.⁷⁸ In this case, John W. Donaldson says, ‘the International Court of Justice admitted that *Uti possidetis* could be in tension with another general principle of international law, that of self-determination. It was adamant that *Uti possidetis* provided the most stable territorial platform for the peaceful succession of sovereignty’.⁷⁹

In this context, the event of secession based on a people’s claim to self-determination has played a pivotal role in the controversy about the standard doctrinal application of the people’s claim to self-determination. Paul Clark has said that, in such cases of secession as those of Kosovo and East Timor, diplomats avoid using the term ‘self-determination’, even when the status quo has been imposed in order to avoid conflict and to change the focus of the case from the popular claim of self-determination to violations of human rights.⁸⁰

Although diverse international instruments and conventions urge the international community to support the right of self-determination in general, they lack special international conventions to implement the content of this right.⁸¹ Additionally, many of these instruments formulate the legal formulas dealing with this right as guidelines, not mandatory obligations. This lack is clearly the result of legal political discussions at the UN and other organisations and of states’ practice of states regarding this right. For instance, Russia supports the right of self-determination in Abkhazia⁸² but not in Syria.⁸³ This situation stems from the negative use of this right in most legal instruments and the lack of an international document that applies to all cases and clearly lays out rules for the implementation of this right. The international community also lacks mechanisms to support the right of peoples to self-determination.

Accordingly, the International law introduced this right but did not provide any broader interpretations clarifying the general meaning of the right’s content. As a result of this ambiguity, conflicts involving the right of self-determination have not been avoided or

⁷⁸ Patrick Muwunguzi, *Reconciling Uti Possidetis and Self-Determination: The Concept of Interstate Boundary Disputes*, King’s College London 2007.

⁷⁹ John W Donaldson, *Perceptions of legal and geographic clarity: Defining international land boundaries in Africa*, Chapter 1; *Essay in African Land Law*, Pretoria University Law Press, 2011, pp. 1-24.

⁸⁰ Paul A. Clark, *Taking Self-determination Seriously: When Can Cultural and Political Minorities Control Their Own Fate?* *Chicago Journal of International Law* (2005) Vol. 5, No.3 .

⁸¹ Helen Quane, *The United Nations and the Evolving Right to Self-Determination*, *International and Comparative Law Quarterly* (1998) Vol. 47, pp. 537-572.

⁸² David Raic, *Statehood and the law of self-determination* (Martinus Nijhoff Publishers, 2002) p. 196.

⁸³ Security Council ‘Meeting No. 6711, Russia, China Use the Veto to block a UN Security Council Resolution on the Syria Situation’ (4 February 2012) <<http://daccess-dds-ny.un.org/doc/UNDOC/PRO/N12/223/56/PDF/N1222356.pdf?OpenElement>> accessed 5 February 2012.

reduced but, to the contrary, have been more intense. Moreover, international disputes regarding the right of self-determination have been subject to the varying interpretations of the jurisprudence of the international law and of the states involved according to their interests.

1.4.3 The definition of the people in the right of self-determination

As mentioned, the right of self-determination is linked to objective standards regarding the expression of the nominally popular will. However, in the contemporary legal literature, finding a single legal formula to define what constitutes ‘the people’ and how they can be linked to self-determination has proven elusive. Helen Quane states that ‘the realization of the right of peoples to self-determination is ambiguous where there is no clear definition of the people; this has contributed to the establishment of numerous conflicting interpretations in dealing with this right’.⁸⁴

It is easy to define the people’s demands for freedom from colonialism or for independence, and it is even easier to define the people’s demands for effective political participation in a regime. However, it is difficult to craft a single formula for defining how the people deal with the right to self-determination in general, as they may be claiming a right of self-determination to gain independence from colonialism or a right of self-determination to secession and become a sovereign entity. Moreover, the particulars of the legal issues involving self-determination are varied and thorny. For example, popular demands for secession can stem from ethnic and linguistic issues, as in Chechnya,⁸⁵ or from national and regional tensions, as in the Western Sahara.⁸⁶ Furthermore, religious factors can also play a crucial role, as in Bosnia and Northern Ireland.⁸⁷

⁸⁴ Helen Quane, *The United Nations and the Evolving Right to Self-Determination*, *International and Comparative Law Quarterly* (1998) Vol. 47, pp 537-572.

⁸⁵ Julie Dahlitz, *Secession and International Law: Conflict Avoidance : Regional Appraisals*, United Nations Publications, 2003, p128.

⁸⁶ Duncan French, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge University Press, 2013, pp. 253-254.

⁸⁷ Anton Pelinka, Dov Ronen, *The Challenge of Ethnic Conflict, Democracy and Self-determination in Central Europe*, Routledge, 2013, p.20.

In this same context, Paul Clark argued that self-determination can be hidden in international law because it lacks substantive interpretations of the concept of the people who make demands for self-determination.⁸⁸ This claim is evidenced by shortcomings in the UN Charter in dealing with this right; the charter does not fully explain this right or the international instruments supporting it. Some of those instruments are focused on one particular type of claim to popular self-determination. For instance, General Assembly resolution 1514 declares that self-determination includes the right to full independence for peoples whose country has been controlled by colonial powers,⁸⁹ whereas General Assembly resolution 2625 describes the exercise of the right to self-determination differently: ‘The establishment of an independent state, sovereign, free association or integration with an independent State or the emergence of any other political status be determined freely by the people constitute modes of implementing the right to self-determination by that people’.⁹⁰

Nevertheless, the right to self-determination has not been of low priority, and despite the passiveness and contrary nature of international practices by states and the UN in dealing with this right, it is an integral part of international law and has been formed through international law. As there are multiple types of claim to the right of self-determination, this dissertation deals with each claim separately or within a specific frameworks, such as the right of peoples under occupation, of colonised peoples and of ethnic groups that suffer from oppression and racial discrimination in any country and all popular claims that fall under the concept of self-determination.

In addition, this dissertation rejects the idea that ‘self-determination’ is not a legal item and can be included or omitted from the lexicon of diplomatic formulas at an individual’s discretion. To the contrary, the right of self-determination is designed to prevent conflict by establishing a negotiated formula to stop forms of popular violence. The right of self-determination is a legal, non-conditional right; the evidence for this claim rests in all the instruments and legal documents that have dealt with the right, such as the UN Charter. The International Covenant on Civil and Political Right declares that ‘all people have rights to self-determination’⁹¹ without discrimination or exclusion of any kind and that it is the general

⁸⁸ Paul A. Clark, *Taking Self-determination Seriously: When Can Cultural and Political Minorities Control Their Own Fate?* Chicago Journal of International Law (2005) Vol. 5, No. 3.

⁸⁹ UN, General Assembly, resolution No. 1514 (December 1960).

⁹⁰ UN, General Assembly, resolution No. 2625 (October 1970).

⁹¹ International Covenant on Civil and Political Rights (1966).

right of any people to have a political influence on the internal and external constitution of their state.

Thus, it is clear that the right of self-determination does not depend upon models of independence and secession, and it can be expanded to accommodate new forms that are based on the legal framework of the right to self-determination. The above analysis of the concept of self-determination in international law notes that, in general, the popular claim of this right is the basis for its emergence. The scope of this right includes two types of demands, the demand for external self-determination, such as separation or independence from colonialism, and the demand for internal self-determination, which refers to the freedom of a nation to organize its political, economic and social affairs. Therefore, the demands for political rights are consistent with this approach to self-determination and this will be addressed in the next part of this chapter when the emergence of the right to political self-determination is discussed.

1.5 The Emergence of the Right of Political Self-determination

According to the previous analysis, the right of self-determination is based effectively on the popular demand for this right. The components of popular demand can vary depending upon the general target of the claim of self-determination. This has been confirmed by international law scholars who are in agreement about the difficulty of finding a specific definition of the scope of the people's right to self-determination, because the types of popular demands vary within the scope of this right, even when the target is fixed. In recent times, the world is witnessing a remarkable development in the promotion of political rights and an end of the period of the dictatorial regimes; thus, the people of a nation are becoming the source of authority within the State. This trend reflects the popular claims that have arisen and/or the revolutions that have emerged to demand the right to political self-determination within the State. This can be seen, for example, in the successive Arab revolutions that began in 2011.

The rising demand of citizens for political participation ushered in the initial phase of the right of self-determination came, but this new era did not see the wide enactment of this right.⁹² These changes in the accepted order of governance can be marked as beginning with the French Revolution, which took its spirit from the desire of the citizenry to end tyranny and to participate in choosing their form of government. Thus, in terms of content and context, such national movement stands as a purely political revolution.⁹³ Subsequently, even the Bolshevik Revolution adopted the formal and objective criteria of the French Revolution.⁹⁴ Since the French Revolution, there have been many historical models of peoples who demand to participate in the rule of their country or to change oppressive regimes that practice persecution and repression against their own citizens.

In modern history, we must not overlook the influence of contemporary civilisation and intellectual currents, whether during the first stage of the creation of the UN or the second stage from the end of the Cold War and the fall of the Berlin Wall and the Iron Curtain. These developments resulted in the creation of legal components that place priority upon human

⁹² Kapitan Tomis, Self-determination and international order, *The Monist* (2006) Vol. 89, No. 2, pp. 356-370.

⁹³ Christopher J. Borgen, The Language of Law and the Practice of Politics: Great Powers and the Rhetoric of Self-determination in the Cases of Kosovo and South Ossetia, *Chicago Journal of International Law* (2009) Vol. 10, No. 1.

⁹⁴ Jeffrey N. Wasserstrom, *Human Rights and Revolutions*, Rowman & Littlefield, 2007, p. 83.

rights by limiting violating individuals' rights.⁹⁵ Simultaneously, the perceived criminality of violations of these rights has intensified. As well, the concepts of human freedom of thought and belief and doctrine have been redefined so as to give every citizen the right to participate in the administration of society,⁹⁶ and democracy has been recognised as the means to do so, making it a lofty goal of the human societies.⁹⁷

In international jurisprudence, there exists a broad debate on the application of the right of self-determination outside the colonial domain where, as mentioned, it customarily holds legal value through the historical attachment of the updated terms of self-determination in the UN system and the emergence of the stage of colonisation. However, David Galbreath holds the opinion that, in the colonial context, the right to self-determination has withered and is inconsistent with important developments in human rights; consequently, the right of self-determination must be linked with the trend to disseminate widely the principles of humanitarian law.⁹⁸ Seen in this light, linking self-determination with the context of colonialism became untenable with the end of the colonial era.⁹⁹

Projecting into the future, Michla Pomerance speculated that, after post-colonialism, self-determination might well become a rule of law through rationing or custom.¹⁰⁰ This could especially be the case against the governments of countries that completely ignore the fundamental interests of the citizens and only give them the minimal rights to be considered effective citizens of the state.¹⁰¹ In addition, Hurst Hannum argues that, in contemporary international law, the right of self-determination consists of the majority's right to participate effectively in the exercise of power by the political unit of an internationally recognised nationstate.¹⁰²

⁹⁵ Srdjan Cvijic, Self-determination as a Challenge to the Legitimacy of Humanitarian Interventions: The Case of Kosovo, *The German Law Journal* (2010) Vol. 8, No 1.

⁹⁶ David J. Galbreath, Dealing with diversity in international law: Self-determination and statehood, *The International Journal of Human Rights* (2005) Vol. 9, No .4.

⁹⁷ Hakeem O. Yusuf, The judiciary and political change in Africa: Developing transitional jurisprudence in Nigeria, *International Journal of Constitutional Law* (2009) Vol. 7, No. 4, pp. 654-682.

⁹⁸ David J. Galbreath, Dealing with diversity in international law: Self-determination and statehood, *The International Journal of Human Rights* (2005) Vol. 9, No .4.

⁹⁹ *Ibid.*

¹⁰⁰ Michla Pomerance, *Law of Self-Determination in Law and Practice*, Martinus Nijhoff Publishers, 1982, pp. 16-52.

¹⁰¹ *Ibid.*

¹⁰² Hurst Hannum, Eileen Babbitt, *Negotiating Self-determination*, Lexington Books, 2006, pp.72-73.

International instruments contain many references supporting the right of political self-determination.¹⁰³ Idowu has said that the instruments and international conventions, including the International Covenant on Civil and Political Rights, and on Economic, Social and Cultural Rights and other instruments that address the concepts of human rights, have paved a smooth path for the right of self-determination by developing the concept of popular participation and equality among peoples.¹⁰⁴

As mentioned, legal doctrine has defined internal self-determination as the freedom of the nation to regulate the internal affairs of politics and economics, as well as social and cultural rights.¹⁰⁵ Thus, internal self-determination takes shape as the right of the majority of a people within the political unity to establish a form of government and national institutions in line with the interests of this majority and in accordance with the accepted principles of international law on the exercise of power. The people within these entities also have some say in the making of the laws that affect their future.¹⁰⁶

The right to internal self-determination also includes several others aspects, including the right of the people to contribute to the general shape of the educational systems, such as freedom of religious education.¹⁰⁷ The political dimension of this right is more comprehensive, because it deals with constitutional law and the general form of the regime of the state. The right of political self-determination consequently is important because it deals with the highest internal systems of countries.

The legal dimension of the right of self-determination represents the people's freedom to choose any form of government and method of the administration for that country.¹⁰⁸ Also essential are legal and political arrangements that ensure that freedom of the people does not

¹⁰³ For example, the International Covenant on Civil and Political Rights, which in Article 1 explicitly states that 'all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. Moreover, the eighth principle of the 1975 Helsinki Agreement stipulates that the participating countries are bound to respect the equal rights of peoples and their right to self-determination and asserts that 'all peoples have the right always in full freedom, to determine when and as they please, and their internal political and external'.

¹⁰⁴ A. A. Idowu, *Revisiting the Right to Self-Determination in Modern International Law: Implications for African States*, *European Journal of Social Sciences* (2008) Vol. 6, No. 4.

¹⁰⁵ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, 1996, p. 114.

¹⁰⁶ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review* (2010) Vol. 57, pp. 29-72.

¹⁰⁷ Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights*, University of Pennsylvania Press, 1996, p. 110.

¹⁰⁸ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge University Press, 1998, p. 298.

result in discrimination against or grant exceptions that contribute to the substantial exclusion of any specific class of people.¹⁰⁹ Cassese has noted that the right to internal self-determination assumes that people will have full participation in political decision-making by the state and all legislative and executive powers.¹¹⁰

It is important to note that such participation enables the people to develop a sense of self-respect and promotes awareness of politics. It also informs governors of their duties towards citizens and encourages them to consider the demands of their people, focus on issues of justice and social peace and to promote the harmony of class and ethnicity. Moreover, such participation facilitates the equitable distribution of wealth as it is based on the natural human right to choose and express an opinion without interference, not on the power to adopt a policy contrary to the interests of the peoples. This is possible as long as participation is conducted in order to develop a political system in which the people are the stakeholders and which does not expression the will of a minority with special status.

Additionally, the right of political self-determination has contributed to increased political freedom of action by giving citizens the right to form and join trade unions and political parties without coercion, which is usually imposed by the ruling party of a country. The effective exercise of these freedoms comes from the active role of this right, which has enhanced the status of these freedoms and made them a legal and political priority on the international level. Hence derives the importance of the right of self-determination in the content and form of international law and international relations and in shaping all aspects of life of the country, when granted freely and in accordance with the traditions of that nation.

However, the tools of good governance and the effective guarantee of people's participation in national decision-making require a special contract between people and government.¹¹¹ I contend that international jurisprudence has commented on this contract indirectly through the concept of democracy as the practical expression of this contract.¹¹² The people are the

¹⁰⁹ Patrick Macklem, *Militant democracy, legal pluralism, and the paradox of self-determination*, *International Journal of Constitutional Law* (2010) Vol. 4, No.3, pp. 488-516.

¹¹⁰ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge University Press, 1998, p. 298.

¹¹¹ Christian Tomuschat, *Modern Law and Self-Determination*, Martinus Nijhoff Publishers, 1993, p. 101.

¹¹² Susan Marks, *What has Become of the Emerging Right to Democratic Governance?* *European Journal of International Law* (2001) Vol. 22, No. 2 pp. 507-524. See also Anne-Marie Slaughter, *Building Global Democracy*, *Chicago Journal of International Law* (2000) Vol 1, No. 2. See also Luiz Carlos, Bresser-Pereira, *Democracy and Public Management Reform: Building the Republican State*, OUP Oxford, 2004, pp 80- 174. See also Eirin Mobekk, *Enforcement of Democracy in Haiti*, *Democratization* (2001) Volume 8, Issue 3, pp 173-188.

first guiding point of this contract, and the second is the authority of the state's legislative, executive and judicial branches. The most important pillar of this contract is the compromise between the people and authorities of the state; consequently, democracy can be considered a good tool to achieve compromise.¹¹³

1.5.1 Democracy in political self-determination

If the right of political self-determination reflects a popular will to end a nation's dictatorship and serves as a means for the people to choose their country's governing mode and style, then democracy is both an effective and an optimal legal way to achieve that right. Hence, it can be said that democracy is integral to the right to political self-determination. Historically, in international law and in the political realm, an objective link has existed between democracy and the right of self-determination, and democracy has been seen as a natural form of balanced governance consistent with self-determination. If one views the right of political self-determination as an important principle that supports popular participation, then democracy is the ideal legal method to achieve that goal.¹¹⁴

Jure Vidmar has said that in terms of theory, democracy is a form of self-determination but a silent form.¹¹⁵ And, in the same direction, Simone van den Driest stated that politically, the best means to support the emergence and development of a democracy are to provide a fertile and stable environment in which for the people to realise the right of political self-determination and participate in how the country is governed.¹¹⁶ In addition, the recommendations of the International Conference of Experts, held in Barcelona from 21 to 27 November 1998, support the existence of an objective link between democracy and self-determination. Specifically, the conference found that the most impressive results in realising the desire of peoples for self-determination clearly were achieved where the people had access to political activities through the democratic process. The findings of the conference also showed that

See also Efraim Inbar, *The Arab Spring, Democracy and Security: Domestic and International Ramifications*, Routledge, 2013, pp. 32-120.

¹¹³ Wolfgang Danspeckgruber, *The Self-determination of Peoples: Community, Nation, and State in an Interdependent World*, Lynne Rienner Publishers, 2002, p.174.

¹¹⁴ Margaret Moore, *National Self-determination and Secession*, Oxford University Press, 1998, p. 10.

¹¹⁵ Jure Vidmar, *The Right of Self-determination and Multiparty Democracy: Two Sides of the Same Coin?* *Human Rights Law Review* (2010) Vol. 10, No. 2, pp. 239-268.

¹¹⁶ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review* (2010) Vol. 57, pp. 29-72.

democratic means provide an effective way to avoid internal conflicts when the people claim the right of political self-determination.¹¹⁷

Organisationally and historically, democracy and self-determination have been considered as separate albeit parallel concepts.¹¹⁸ However, both concepts are realised most fully when blended. This merger comes from the homogeneity and integration between the government and its people, which are the foundational principle of both democracy and the concept of self-determination. A representative government allows the people on-going participation in national decision-making, whether economic, political or cultural.¹¹⁹ This situation stands as the truest picture of those peoples who can decide their fate without duress or repression and is the epitome of the right of political self-determination.

This correlation extends beyond representative government; the democratic system of government also reflects the right of self-determination by recognising the people as the source of legislation and authority.¹²⁰ This view is the silently growing trend in the contemporary international law. This concept mandates that no occupier of a country impose a constitution upon the occupied country or its will upon the authors of a constitution; nor may there be any apparent or hidden groups or individuals who manipulate power, let alone a monopoly of power or wealth that influences the public.¹²¹ In contrast, people must serve as the source of authority and legislation, and the exercise of this authority must be carried out by free individuals, who are given and retain the right to legitimise the power of the state.

For a democracy, political pluralism is one of the basic conditions or, at the least, a foundational manifestation of its existence.¹²² Thus, if democracy presupposes the existence of a multi-party political system, this leads to the important conclusion that the people's exercise of their right to practice self-determination, especially politically, requires a system

¹¹⁷ The international conference of experts of implementation of the right to self-determination as a contribution to conflict prevention, Organised by the UNESCO Division of Human Rights Democracy and Peace and the UNESCO Centre of Catalonia, November 1998 <<http://www.unpo.org/article/446>> accessed 2 January 2012.

¹¹⁸ Ferran Requejo Coll, *Democracy and National Pluralism*, Routledge, 2001, pp. 84-85.

¹¹⁹ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review* (2010) Vol. 57, pp. 29-72.

¹²⁰ Burke A. Hendrix, *Ownership, Authority, and Self-Determination*, Penn State Press, 2008, p. 86.

¹²¹ Allen Buchanan, *Justice, Legitimacy, and Self-determination: Moral Foundations for International Law*, Oxford University Press, 2003, p. 233.

¹²² Antonio Cassese, *Self-determination of Peoples: A Legal Reappraisal*, Cambridge University Press, 1998, p. 41.

of political pluralism. In addition, the democratic political project in self-determination provides a fertile environment to guarantee human rights.¹²³ Doing so is consistent with the recent trend in the international system, in which a government selected by the people can lose its national legitimacy given incontrovertible evidence that it has violated human rights. Therefore, the link between self-determination and democracy supports human rights.

In the global system, democracy faces a special challenge from legal pluralism. However, the international law of human rights has contributed indirectly to alleviating this challenge by giving preference to the individual's civil and political rights.¹²⁴ Specifically, the international law of human rights grants to the individual the freedoms of expression, association and religion. For example, Articles 19 and 22 of the International Covenant on Civil and Political Rights stipulate these freedoms, including seeking the right of political self-determination.¹²⁵ Moreover, there are many regional charters that provide for these freedoms. For example, the European Convention on Human Rights, through Article 11, gives the right both to form associations and unions and to join them.¹²⁶ Similarly, the African Charter on Human and Peoples' Rights specifies in Article 10 that everyone has the right to form and to join associations.¹²⁷ The Article further stipulates that no one may be compelled to join an association or to leave it because of his or her beliefs.¹²⁸

Democracy thus became the effective form and the standard model for formulating the right of political self-determination. However, democracy is not only a means for people to express their political will but is a major goal for peoples across the world¹²⁹ and is increasingly expressed as the will of the public in various countries.¹³⁰ Democracy certainly has deep roots in human history, and over time, various polities have had different visions of the form, manner and content of democracy. However, contemporary human thought has framed democracy as a means for providing stability to the individual citizen's life and for freeing

¹²³ David J. Galbreath, *Dealing with diversity in international law: Self-determination and statehood*, *The International Journal of Human Rights* (2005) Vol. 9, No. 4.

¹²⁴ Patrick Macklem, *Militant democracy, legal pluralism, and the paradox of self-determination*, *International Journal of Constitutional Law* (2006) Vol. 4, No. 3, pp. 488-516.

¹²⁵ *International Covenant on Civil and Political Rights* (1966).

¹²⁶ *European Convention on Human Rights* (1950)

¹²⁷ *African Charter on Human and Peoples' Rights* (1981).

¹²⁸ *Ibid.*

¹²⁹ Jure Vidmar, *The Right of Self-determination and Multiparty Democracy: Two Sides of the Same Coin?* *Human Rights Law Review* (2010) Vol. 10, No. 2, pp. 239-268.

¹³⁰ Corsin Bisaz, *The Concept of Group Rights in International Law: Groups as Contested Right-Holders, Subjects and Legal Persons*, Martinus Nijhoff Publishers, 2012, p. 60.

citizens from the humiliation and subjugation inflicted by non-representative regimes, such as dictatorships.¹³¹ Accordingly, democracy is one of the most important features of the current era. To an increasing degree, the contemporary human society of advanced technology-based civilisations indisputably is founded on the principles of intellectual and political pluralism and freedom of association and the embrace of religious tolerance.¹³²

Around the world, democracy has increasingly emerged in a number of countries as a need and realistic political and legal demand. As concern for human rights has influenced the issue of the need for a process to establish systems of governance, the democratic impulse become intensified in parallel.¹³³ In turn, this impulse has contributed to the interest in human rights and the rights to free expression of political opinions and religious beliefs; to work; to have health insurance; to be free from physical torture, persecution and murder by the agents of the state; and to seek the punishment of such perpetrators. It can be argued that the democratic system is the best means to ensure human rights, to achieve the principles of justice and equality¹³⁴ and to provide a comfortable environment for human life.

As a concept of governance, democracy has developed amid sharp class struggle and political turmoil and can be seen as the essential demand for which the peoples struggle.¹³⁵ Democracy is based on the will of the conscious, active citizen who finds fulfilment in political participation, the achievement of economic and social rights and duties, and participation in the construction of the state.¹³⁶ Democracy embraces two key principles: the importance of popular will in the process of decision-making¹³⁷ and equal rights for all citizens in the exercise of that power.¹³⁸ Together, these principles constitute the foundation of democratic governance, as far as can be achieved. Therefore, the main principles of

¹³¹ Carsten Q. Schneider, *The Consolidation of Democracy: Comparing Europe and Latin America*, Routledge, 2008, p. 1.

¹³² Anne-Marie Slaughter, *Building Global Democracy*, *Chicago Journal of International Law* (2000) Vol 1, No. 2.

¹³³ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review* (2010) Vol. 57, pp. 29-72.

¹³⁴ Tom Campbell, Adrienne Sarah Ackary Stone, *Protecting Human Rights: Instruments and Institutions*, Oxford University Press, 2003, p. 143.

¹³⁵ Carol C. Gould, *Globalizing Democracy and Human Rights*, Cambridge University Press, 2004, p. 182.

¹³⁶ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review* (2010) Vol. 57, pp. 29-72.

¹³⁷ Daniele Archibugi, Mathias Koenig-Archibugi, Raffaele Marchetti, *Global Democracy: Normative and Empirical Perspectives*, Cambridge University Press, 2011, p. 73.

¹³⁸ Carol C. Gould, *Globalizing Democracy and Human Rights*, Cambridge University Press, 2004, p. 106.

democracy do not only shape the private world of the state or government but are closely related to the collective rights of citizens.

The concept of democracy has been reinforced in all of contemporary literature, especially that dealing with legal and political issues, and has become an important part of contemporary intellectual discourse.¹³⁹ Although the UN Charter does not contain the word 'democracy', the UN has directly supported of democracy. For example, General Assembly Declaration No. A/RES/62/7 made 15 September the International Day of Democracy.¹⁴⁰ As well, the very foundation of the UN and the decisions of its committees have supported democracy. Evidence of this claim comes from the reports of the Secretary-General No. A/60/556¹⁴¹ and A/58/392, which give the UN system's support to governments' efforts to promote and consolidate new or restored democracies.¹⁴² The UN Human Rights Commission has demonstrated real attention to democracy, specifically in resolution No. 2000/47 which recommends a set of legislative measures and important institutional processes to support the spread of democracy.¹⁴³ In resolution 2002/46, the Commission identified the essential elements of democracy, in particular its governance frameworks and principles.¹⁴⁴

In addition, many international conventions make democracy a goal or right of citizens. For example, the 1966 International Covenant on Civil and Political Rights laid the core foundational principles of democracy in the framework of international law. Article 19 guarantees the freedom of expression, Article 21 the right to peaceful assembly and, most influentially, Article 25 the right to participate in the management of the public affairs of the

¹³⁹ Anne-Marie Slaughter, Building Global Democracy, Chicago Journal of International Law (2000) Vol. 1, No. 2.

¹⁴⁰ UN, General Assembly, Declaration No. A/RES/62/7 (November 2007).

¹⁴¹ UN, Report of the Secretary-General No. A/60/556 (April 2005)
<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/604/95/PDF/N0560495.pdf?OpenElement>> accessed 28 February 2012.

¹⁴² UN, Report of the Secretary-General No. A/58/392 (May 2003)
<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N03/534/15/PDF/N0353415.pdf?OpenElement>> accessed 28 February 2012.

¹⁴³ UN, Commission on Human Rights Res 2000/47 (2002).
<<http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.RES.2000.47.En?Opendocument>> accessed 29/02/2012.

¹⁴⁴ UN, Commission on Human Rights, resolution No. 2002/46 (2002).
<http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/ap.ohchr.org/documents/E/.resolutions/E-CN_4-RES-2002-46?Opendocument> accessed 29/02/2012.

country.¹⁴⁵ Also, Article 8 of the International Covenant on Economic, Social and Cultural Rights 1966 provides for the freedom to form and join trade unions with no restrictions.¹⁴⁶ Democracy has become important intellectually for the authors of constitutions; most of the constitutions that have been re-formulated or re-written have aimed to form the basis for a democracy, including the 1996 Constitution of South Africa¹⁴⁷ and 2006 Constitution of Iraq.¹⁴⁸ Richard Burchill stated that, during the establishment of a global system after the end of the Cold War, democracy has become the dominant ideology of international law and human thought, especially concerning the form of government.¹⁴⁹

Other conventions and regional organisations have more explicitly embraced of the democratic approach. Article 9 of the Charter of the Organization of American States (OAS) clearly calls for the expulsion of a member which topples a democratic government by force.¹⁵⁰ This text represents the democratic system as the highest degree of good governance and sets it as a standard, required membership in the organisation. Article 30 of the Constitutive Act of the African Union (AU) similarly forbids governments that come to power through unconstitutional means from participating in the organisation's activities.¹⁵¹ This text focuses on the concept of democratic representation and its promotion in cases where the government is not democratic, which has become increasingly unpopular in the customs of modern international governance. The global change in national governance systems demonstrates the increase of countries that have embraced the key qualities of democracy. There were fewer than 60 such countries in 1985 but more than 140 countries in 2007.¹⁵²

Democracy, as expressed in international charters and conventions and in regional developments, is a wide and vast subject. Many covenants on human development, humanitarian protection and the achievement of world peace and security, such as the 1991

¹⁴⁵ International Covenant on Civil and Political Rights (1966).

¹⁴⁶ International Covenant on Economic, Social and Cultural Rights (1966).

¹⁴⁷ Heather Deegan, *South Africa Reborn: Building a New Democracy*, Psychology Press, 1999, p. 31.

¹⁴⁸ UN, Security Council 'Meeting No. 5189, Drafting Iraq's Permanent Constitution by 15 Article Most Critical Step in Political Process, Foreign Minister Tells Security Council' (May 2005) Press release <<http://www.un.org/News/Press/docs/2005/sc8398.doc.htm>> accessed 3 March 2012.

¹⁴⁹ Richard Burchill, *International Law of Democracy and the Constitutional Future of the EU: Contributions and Expectations*, Queen's Papers on Europeanization (2003) Volume 11.

¹⁵⁰ Charter of the Organization of American States (1948).

¹⁵¹ Constitutive Act of the African Union (2000).

¹⁵² UN Development Programme, 'Fast Facts: UNDP and Democratic Governance'

<http://www.unis.unvienna.org/pdf/Democracy_UNDP_fast_facts_2008.pdf> accessed 18 March 2012.

Harare Declaration¹⁵³ and 1990 Copenhagen Declaration, have supported for the concept of democracy and worked to make it a legal right to humanity.¹⁵⁴ As well as, some charters of regional and international organisations are concerned in the democracy, such as the African Charter on Democracy, Elections and Governance.¹⁵⁵ According to the concept expressed in these conventions, democracy develops from a conscious, civilised process associated with human development. It is often sparked by overall mounting dissatisfaction among the majority, who are usually society's poorest members. Related to this is the idea that democracy is a process to enact radical structural change based on the principles of freedom involved in humanitarian issues and the rights of each citizen.

1.5.2 The Claims for Political Self-determination and Repressive Regimes

Popular demand is the typical standard for evaluating the emergence of the right to self-determination, there cannot be a tangible and moral force for this right, without the presence of popular demand.¹⁵⁶ The claim of political self-determination is based on freedom from dictatorship and the assurance that all people will be able to participate in decision-making and uphold the rule of law, and that a nation's people are the source of the State's authority. These measures ensure access to good governance.¹⁵⁷ Current trends in international law clearly support popular demand for the right of political self-determination, as evidenced by many, varied international conventions and international practices. For example, Article 20 of the African Charter on Human and Peoples' Rights states that: "Every people have the right to self-determination and they shall freely determine their political status".¹⁵⁸ In addition, Article 21 of the Universal Declaration of Human Rights states that "Everyone has the right

¹⁵³ Harare Declaration (1991) para 4

<http://www.thecommonwealth.org/shared_asp_files/GFSR.asp?NodeID=141095> accessed 20 June 2011.

¹⁵⁴ Copenhagen Declaration (1990) Para 4 <<http://www.osce.org/odihr/elections/14304>> accessed 16 June 2011.

¹⁵⁵ The African Charter on Democracy, Elections and Governance (2007) <<http://www.africa-union.org/root/au/Documents/Treaties/text/Charter%20on%20Democracy.pdf>> accessed 20 June 2011.

¹⁵⁶ Steven Wheatley, *Democracy, Minorities and International Law*, Cambridge University Press, 2005, p. 124-126. See also Kristina Roepstorff, *The Politics of Self-determination: Beyond the Decolonisation Process*, Routledge, 2012, pp. 97-105. See also Luke Glanville, *Sovereignty and the Responsibility to Protect: A New History*, University of Chicago Press, 2013, p. 87

¹⁵⁷ Christian Tomuschat, *Modern Law and Self-Determination*, Martinus Nijhoff Publishers, 1993, p. 51.

¹⁵⁸ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 30<<http://www1.umn.edu/humanrts/instree/z1afchar.htm>> accessed 08 March 2012.

to take part in the government of his country, directly or through freely chosen representatives".¹⁵⁹

Claims to political self-determination differ in essence from popular demands for independence from colonial rule and secession from the parent state. The latter aim to change the external structure but not necessarily the internal workings of how the state governs its people. In contrast, popular demand for the right of political self-determination specifically targets the internal form of governance used by the state, and external influence is limited to accepting procedural changes in internal form of the state by the international community.

Popular demands for self-determination differ not only in the need for external or internal change to the state but also in the factors behind the emergence of these demands in the first place.¹⁶⁰ For example, popular demand for independence might be motivated by the aim to eliminate colonial rule and establish the state's right to govern itself independently as a sovereign territory.¹⁶¹ In contrast, demands for political self-determination can be driven by the desire to end dictatorship, uphold the rule of law or achieve good governance through public participation in decision-making. In addition, the ruling entity of a state and its members belong to the same wider community of citizens and should work to establish ethnic, cultural and social unity. Whereas, in the case of secession, the demands made by individual communities within a state contradict the views of other communities within that state, whether those demands reflect an individual community's sense of nationalism, ethnic origins, language or religious beliefs.¹⁶²

Thus, the popular demand for the right of political self-determination differs in both substance and content from other claims for traditional forms of self-determination. These differences extend to the causes of and motivations for these claims: Consistently, rule by an authoritarian, dictatorial regime is the reason such claims are advanced.¹⁶³ A dictatorial regime is based on the concept of a police state and, accordingly, does not accept the idea of

¹⁵⁹ Universal Declaration of Human Rights (1948) .

¹⁶⁰ Igor Primoratz, Aleksandar Pavkovic, *Identity, Self-determination and Secession*, Ashgate Publishing, 2006, p.8.

¹⁶¹ Helen Quane, *The United Nations and the Evolving Right to Self-Determination*, *International and Comparative Law Quarterly* (1998) Vol. 47, pp. 537-572.

¹⁶² Gentian Zyberi, *Self-Determination Through the Lens of the International Court of Justice*, *Netherlands International Law Review* (2009) Vol. 56, pp. 429-453,

¹⁶³ Roland Burke, *Decolonization and the Evolution of International Human Rights*, University of Pennsylvania Press, 2011, p. 29.

giving people opportunities to participate in the management of the state or to enjoy partisan and intellectual. There is no doubt that this type of government inconsistent with contemporary human thought and with the rules of international law. Therefore, popular demands for political self-determination seek to end dictatorial regimes and enable the people of a nation to determine the type and style of government that is used to run that nation.¹⁶⁴

If popular demand for the right to political self-determination arises under a dictatorial regime, how does such a regime address those claims? Almost without fail, the regime will apply repression in an attempt to abort and extinguish those claims. This pattern can be seen, for example, in the events in Libya in 2011 and in the Syrian people's efforts to exercise their right to political self-determination.¹⁶⁵ As mentioned, popular demand for this right is based on many rules of international law.¹⁶⁶ In addition, the repressive measures dictatorial governments adopt in response generally are contrary to international law, in particular, to the international law of human rights, as they lead to the commission of international crimes. For example, the Syrian regime's military forces used chemical weapons in an attempt to silence citizens' popular demands for an end to the regime.¹⁶⁷

Under modern legal concepts, including the principle of responsibility to protect,¹⁶⁸ which adopted in UN Security Council Resolution No. 1647,¹⁶⁹ the international community can take measures to protect claims to political self-determination and to prevent rights violations and crimes against all those who demand this right. For example, in the 2011 Libyan revolution, Muammar Gaddafi's regime violated international human rights law in order to deny the people's claims and to silence demonstrations calling for an end to his dictatorship.¹⁷⁰ These violations pushed the international community to engage in economic

¹⁶⁴ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review* (2010) Vol. 57, pp. 29–72.

¹⁶⁵ Sandesh Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012, pp. 138–143.

¹⁶⁶ For example see the Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), African Charter on Human and Peoples Rights (1981) and the Document of the Copenhagen Meeting on the Human Dimension of the CSCE (1990).

¹⁶⁷ Human Rights Watch Report, Syria: Government Likely Culprit in Chemical Attack, 10/09/2013, available at (<http://www.hrw.org/node/118725/>) accessed 29 June 2014.

¹⁶⁸ Alex J. Bellamy, Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit, *Ethics & International Affairs* (2006) Vol. 20, pp 143–169.

¹⁶⁹ UN, Security Council, Resolution 1674 (April 2006).

¹⁷⁰ Sandesh Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012, p. 143.

and military interventions to protect the Libyan people and help them achieve the right of political self-determination.¹⁷¹

However, legal arguments against such measures can be made based on the principle of non-interference. We can see such opposition in Russia's and China's veto of UN Security Council resolutions intended to protect the Syrian people from serious rights violations and to promote their right to political self-determination.¹⁷² These legal arguments based on the principle of non-interference are derived, in particular, from Article 2/7 of the UN Charter, which is the primary expression of this principle in international law.¹⁷³

The above analysis led to the conclusion that the popular demand for the right to political self-determination is based on international law. However, such claims are established permanently by the people who live under a repressive regime or dictatorship. The objectives of these claims are to end authoritarian regimes and to ensure the participation of all peoples in national decision-making and selection of the economic and political systems that best conform to their aspirations. However, authoritarian regimes do not accept this point of view or value the desires of the people. Contemporary legal thought does not adequately consider or address the reality that making such claims exposes people to serious violations of their rights in international law. Consequently, the international community acts by itself to protect these claims and support the people's right to self-determination, which has contributed to the creation of a substantive relationship between the claim to political self-determination and the international promotion and support of that claim.

It is true that there is a link between repression and popular demands for secession or independence from colonial rule as the colonial or parent state might refuse to address those claims or respond with violence, as happened in Kosovo.¹⁷⁴ However, in Kosovo, the demand for independence or separation was not due to the existence of a dictatorial regime but, rather,

¹⁷¹ Spencer Zifcak, *The Responsibility to Protect after Libya and Syria*, *Melbourne Journal of International Law*, (2012) Vol. 13, No. 1.

¹⁷² United Nations News, *Russia and China veto draft Security Council resolution on Syria* (<http://www.un.org/apps/news/story.asp?NewsID=39935&Cr=syria&Cr1> at 15/10/2011).

¹⁷³ UN Charter (1945).

¹⁷⁴ Duncan French, *statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge University Press, 2013, pp112-115.

to the ethnic and nationalist divisions of that particular region.¹⁷⁵ These motivations reflect the different types of claims that fall within the scope of self-determination, as explained earlier. In another case, the parent state might pursue a democratic approach and provide the people with the opportunity to vote. However, the people might remain deeply committed to their claim to the right of political self-determination because the government was originally a dictatorship and did not allow democracy.

The correlation between the popular demand for the right of political self-determination and international intervention conflicts with the principle of non-interference, posing a fundamental question: Does the principle of non-interference have an effective impact upon the promotion of the right to political self-determination? Moreover, what are the results of the confrontation between the principle of non-interference and the right to political self-determination?

1.6 Conclusion

The right of political self-determination is among the most important that has been developed in modern international law and legal discourse by both scholars of international law, such as Michla Pomerance and David Rick, and international instruments, such as Article 1 of the International Covenant on Civil and Political Rights and the Eighth Principle of the Helsinki Agreement. Democracy has become an effective means to ensure the exercise of the right to political self-determination. It can be said that, if the right of political self-determination is an important means to achieve popular political participation, then democracy is the ideal legal method to achieve that goal.

The right of self-determination did not cease to be relevant at a certain historical point, such as the end of colonisation; instead, it has evolved with contemporary human thought, serving as a legal justification that people can use in their efforts to end authoritarian governments. Such governments are those that do not seek to achieve social justice but rather use dictatorial behaviour to run the country and commit crimes against humanity to ensure the continuation

¹⁷⁵ Milena Sterio, *The Right to Self-determination Under International Law: "selfistans", Secession and the Rule of the Great Powers*, Routledge, 2013, pp. 121-124.

of their rule. Thus, the emergence of popular demands within those regimes subjects the people who are claiming this right to real risks, because those regimes will not accept this claim and they will use any and all means to suppress and extinguish the efforts of the people to claim their right to self-determination. This matter asserts that this right is permanently linked with international promotion and intervention, but that approach collides with the principle of non-interference.

Hence, a conflict exists between the right of political self-determination and the principle of non-intervention, and that conflict requires a comprehensive analysis of the provisions of international law that support both self-determination and non-intervention. It is also important to examine the international practices related to this issue, in particular the international interventions that promote the right of political self-determination.

However, before that analysis can be undertaken it is necessary to ensure that the right to political self-determination does not violate the legal concept of statehood or the criteria of statehood in international law. Realising the right to political self-determination certainly leads to a change in the form of statehood. This change must be consistent with international law, particularly the international instruments and conventions that govern the emergence of the state and international recognition of the state after internal or external changes have occurred in regard to the government. The second chapter of this dissertation examines the impact that the right of self-determination has on the concept of the state in international law. It attempts to answer the following questions: Are changes to the form of statehood inconsistent with international law? If so, do they stand in the way of the current trend in contemporary international law and the international community to embrace and participate in the expansion of the right of self-determination?

Chapter Two

The right of political self-determination, statehood and recognition in international contemporary law

2.1 Introduction

Contemporary legal literature holds that a close link exists between the general right to self-determination and the legal principles and concepts that address state-building or rebuilding.¹⁷⁶ Consequently, this right and these legal concepts reinforce one another; the right of self-determination cannot be achieved without fundamental changes to the state, whether to its external or internal form.¹⁷⁷ However, a conflict arises with the principles of international law that deal with each issue separately.¹⁷⁸ For example, the principles of state sovereignty and territorial integrity have been associated with the concept of statehood,¹⁷⁹ while the right of self-determination has been linked to contemporary intellectual thought's concern with promoting human rights, human dignity and social justice.¹⁸⁰ International organisations consistently pursue these aims in various ways.¹⁸¹

The right of political self-determination becomes more prominent in the rebuilding of the state when people seek to achieve self-determination within an already established state.¹⁸² Rebuilding state institutions and changing the governance system can lead to a significant transformation in the internal form of the state. Therefore, there is a strong link between the

¹⁷⁶ David Raic, *Statehood and the Law of Self-Determination*, The Hague ; New York : Kluwer Law International, 2002, pp 1-3

¹⁷⁷ Secession played a pivotal role in forming and strengthening the interdependence between statehood and the right of self-determination in international law. This point becomes clear when looking at the legal literature on statehood, which requires addressing the subject of secession. We do have to state that the legal literature is sophisticated and constantly being updated to be consistent and in harmony with the prevailing legal thought and international practices of modern treaties.

¹⁷⁸ Jure Vidmar, *Democratic Statehood in International Law : The Emergence of New States in Post-Cold War Practice*, Hart Publishing Limited, 2013, pp 10-38

¹⁷⁹ Obiora Chinedu Okafor, *Re-Defining Legitimate Statehood: International Law and State Fragmentation in Africa*, Martinus Nijhoff Publishers, 2000, p71

¹⁸⁰ Srdjan Cvijic, *Self-determination as a Challenge to the Legitimacy of Humanitarian Interventions: The Case of Kosovo*, *The German Law Journal* (2007) Vol. 08, No. 1. pp. 57-81.

¹⁸¹ Seth G. Jones , James Dobbins , *The UN's Record in Nation Building*, *Chicago Journal of International Law*, (2006) Vol. 6, No. 2.

¹⁸² Milena Sterio, *The Case of Kosovo: Self-Determination, Secession, and Statehood Under International Law*, *Proceedings of the Annual Meeting (American Society of International Law 2010)* Vol. 104, pp. 361 – 365.

right of political self-determination and the legal principles that address the internal form of the state, such as absolute sovereignty. This does not mean that the external form of the state is irrelevant to this matter but, rather, that internal changes in the state affect its external form. From this relationship emerge the legal criteria that settled the jurisprudence on international state-building and rebuilding and established that the state is accepted as a normal party among the parties involved in international law.¹⁸³

Contemporary and traditional legal literature has been concerned with the sovereignty of the state for a variety of reasons, most importantly the maintenance of international peace and security.¹⁸⁴ As well, international law aims to achieve and make substantial the aspirations and wishes of the people. Although the contemporary erosion of state sovereignty caused by globalisation and trade agreements should not be overlooked, the most important causes of changes in the concept of sovereignty are the development of human rights and the international responsibility to preserve these rights within a legal model.¹⁸⁵

Thus, the formal criteria for the right of self-determination are inconsistent with concepts inherent in international law regarding statehood and state sovereignty. These criteria also demonstrate a lack of connection to the entity from they originated geographically and politically.¹⁸⁶ Thus, a fundamental question arises: Do the legal concept of statehood and the maintenance of state sovereignty oppose the present trend in the international community and contemporary international law to embrace expand and embrace the right of self-determination?

This chapter attempts to answer this fundamental question by studying the legal concepts and principles involved in the emergence in international law of statehood and state rebuilding and the impact on the rights of self-determination, especially the right to political self-determination. This chapter begins by reviewing the concept of statehood in international law. Next, this chapter discusses state-building and the criteria for the emergence of the state

¹⁸³ Dealing with diversity in international law: Self-determination and statehood, *The International Journal of Human Rights* (2005) Vol. 9, No. 4, pp. 539 – 550.

¹⁸⁴ Heike Krieger, *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*, Cambridge University Press, 2001, pp 369-371

¹⁸⁵ J. L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, p. 6. Also see Helen Stacy, *Human Rights for the 21st Century: Sovereignty, Civil Society, Culture*, Stanford University Press, 2009, p. 32.

¹⁸⁶ Duncan French, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge University Press, 2013, p352

established in law, in particular the Montevideo Convention. Then, the focus shifts to the recognition of statehood and the most prominent classical and modern legal theories of international recognition. Finally, this chapter concentrates on popular demands for the right to self-determination and their impact on the political and legal concepts concerning rebuilding the state internally.

2.2 Statehood in international law

The legal concept of the state refers to the arrangement of an integrated and homogeneous organisation that consists of social, economic, political, legal and military institutions. All these units work to accomplish their goals within a common intellectual ideology and philosophy adopted to create a harmonious and stable state.¹⁸⁷ Thus, the state is a system or structure that promotes social coexistence within a single legal framework and the limits of a specific intellectual tradition. The state marks an intellectual and theoretical construction of a shared lifestyle that achieves an advanced stage of quality of life.¹⁸⁸

Thus, the state is a social and political phenomenon possessing complex elements that are interdependent and integrated with each other.¹⁸⁹ These elements include the aims to establish the supremacy of state power, to determine the composition of the system and to distribute powers among the various elements of the state.¹⁹⁰ In addition, the state involves a government system which may practice all the methods and means of exercising state power; this system is part and parcel of the political regime.¹⁹¹ A government system is a broad concept, encompassing the procedures and methods not only of executing the authority of the state but also of exercising political power by sharing it with political parties and civil society

¹⁸⁷ J. Craig Barker, *International Law and International Relations*, London, Continuum, 2000, pp 38-41

¹⁸⁸ Thomas Grant, *Defining Statehood: The Montevideo Convention and its Discontents*, *Columbia Journal of Transnational Law* (1999) Vol. 33, No. 2, pp. 403 - 457. See also Aleksandar Pavković, Peter Radan, *On the Way to Statehood: Secession and Globalisation*, Ashgate Publishing, Ltd., 2008, pp 1-45. See also Milena Sterio; David Wippman, *Creating and building a "state": international law and Kosovo*, *Proceedings of the Annual Meeting-American Society of International Law* (2010) Vol. 104, p. 361.

¹⁸⁹ Jean D'Aspremont, *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law*, Taylor & Francis, 2011, p98

¹⁹⁰ Obiora Chinedu Okafor, *After Martyrdom: International Law, Sub-State Groups, and the Construction of Legitimate Statehood in Africa*, *Harvard International Law Journal* (2000) Vol. 41, No. 2, pp. 503 – 528.

¹⁹¹ Martin Dixon, Robert McCorquodale, Sarah Williams, *Cases and Materials on International Law*, Oxford University Press, 2011, p 135. See also Max Byrne, *The Failed State and Failed State- Building: How Can a Move Away From the Failed State Discourse Inform Development in Somalia?* *Birkbeck Law Review* (2013) Vol. 1 ,No. 1.

organisations in the political system. In any state, political power is perceived as authentic only if it is not derived from other authority; instead, other entities draw their authority from the political power. The state's political power is defined as general competence in all aspects of life within the state, in contrast to other authorities which are concerned with the organisation of a single, particular aspect of the people's lives. In addition, political power marks a distinction between the state and the nation. Political power is required to establish the state; however, political power is not necessary for the existence of the nation.¹⁹²

The legal construction of the state shows that, in the existence of the separate, legal person of the sovereign, political power emerges as the highest internal authority and claims the capacity to represent the people of the nation abroad.¹⁹³ As well, political power confers the right to issue political decisions both within and outside the state which reflect the philosophy espoused by the state. Thus, the state is an independent entity which possesses the characteristic of stability and promotes a sense of solidarity among certain members of the human race.¹⁹⁴ The forms and models of the state have varied according to different intellectual philosophies and popular ideologies which, in turn, have been influenced and governed by the strength of the ruling elite. We find different legal forms for running countries such as socialist and capitalist states.¹⁹⁵ As well, there are democratic countries that support the effective rule of law and social justice and police states that rely on the suppression of intellectual and religious freedoms and beliefs and permit only one ruling party.¹⁹⁶

The intellectual philosophy of state administration emerges during certain stages of building or rebuilding the state. The standards of state-building have varied, and views on it are

¹⁹² Gerard Kreijen, *State Failure, Sovereignty And Effectiveness: Legal Lessons from the Decolonization of Sub-Saharan Africa*, Martinus Nijhoff Publishers, 2004, pp 11-26. See also Dan Stigall, *Comparative Law and State-Building: The "Organic Minimalist" Approach to Legal Reconstruction*, *Loyola of Los Angeles International & Comparative Law Review* (2007) Vol. 29, No. 1. See also Jorri Duursma, *Fragmentation and the International Relations of Micro-states: Self-determination and Statehood*, Cambridge University Press, 1996, pp 18-20.

¹⁹³ Hans Kelsen, *The legal state in international law*, *The Lawbook Exchange.*, 2009, pp 180-229

¹⁹⁴ Joseph H. Weiler, *Differentiated statehood? "Pre-states"? Palestine@the UN; EJIL and EJIL:Talk!; the strange case of Dr. Ivana Radacic; looking back at EJIL 2012 - the stats; changes in the masthead - our scientific advisory board; in this issue*, *European Journal of International Law* (2013) Vol. 24, No. 1, pp. 1 – 11.

¹⁹⁵ Masahiro Igarashi, *Associated Statehood in International Law*, Martinus Nijhoff Publishers, 2002, p 5. Also see Obiora Chinedu Okafor, *Re-Defining Legitimate Statehood: International Law and State Fragmentation in Africa*, Martinus Nijhoff Publishers, 2000, p72. See also Milena Sterio, *The Right to Self-determination Under International Law: "selfistans", Secession and the Rule of the Great Powers*, Routledge, 2013, p 47

¹⁹⁶ Matthew Craven, *Statehood, Self-Determination, and Recognition*, International Law , Oxford University Press, 2013 , p 203

multiple. I next examine these perspectives in order to understand the legal nature of state-building and rebuilding driven by demands for the right to self-determination.

2.3 The legal criteria for statehood

The construction or reconstruction of the state unarguably requires achieving certain legal standards for the legitimacy of the state to be recognised by international law. At the time a new state emerges, it normally does not comply with all forms of international law.¹⁹⁷ Therefore, the new state needs to build its legitimacy on the international level in substance and appearance. In international law, the construction of a legitimate state based on an internal form of self-determination which grants citizens the right to participate in political decision-making does not fundamentally differ from legitimacy based on an external form of the right of self-determination.¹⁹⁸ The first chapter of this thesis demonstrated the importance of the right to political self-determination and the adoption of a discourse in international law that values democracy, good governance and social justice. These changes have become significant factors in the development of current international law which directly influences human rights in general and the details of relevant laws.

The legal criteria for the emergence of the state have differed and expanded according to the intellectual and ideological variables operating in international law.¹⁹⁹ However, studying the traditional and historical emergence of countries shows that the population or community which forms a state commonly serves as a major reason for the existence of that state. Historically, nationalism has played an active role in the development of populations into states and, through common ethnic, linguistic and religious links, promoted the emergence of the state. As well, respect for the customary laws prevalent in that period must exist.²⁰⁰

Nationalism held prominence in state-building in both traditional law and ancient history. Examining many countries around the world reveals the pivotal role of nationalism in state-

¹⁹⁷ James Crawford, *The Creation of States in International Law*, Oxford University Press, 2006, pp 5-42

¹⁹⁸ Milena Sterio, *The Right to Self-determination Under International Law: "selfistans", Secession and the Rule of the Great Powers*, Routledge, 2013, p 47.

¹⁹⁹ Van Der Vyver, *Statehood in international law*, *Emory International Law Review* (1991) Vol. 5, No. 1 .

²⁰⁰ David Galbreatha , *Dealing with diversity in international law: Self-determination and statehood* , *The International Journal of Human Rights* (2005) Vol. 9, No. 4, pp. 539 – 550.

building.²⁰¹ For example, nationalism made names, language and the national anthem important symbols of the nation of Japan.²⁰² The right of self-determination traditionally has arisen in this context as populations develop nationalistic aspirations but do not have an internationally recognised right to establish a state.²⁰³ For example, the Kurds, who number nearly 35 million people, lack a national home or state and are distributed among various countries, including Iran, Iraq, Turkey, and Syria.²⁰⁴ However, when considering claims to self-determination, we must be mindful of the difference between nationalism that demands independence from an external colonial power and nationalism among populations distributed within a country or among several countries that demands the creation of an international entity to be their home.²⁰⁵

In nationalistic states, we find that homogeneity exists between individual groups and political power, whatever the kind and form of the government. The model of a state incorporating the people and the official legislative and executive authorities undoubtedly was an acceptable standard when nationalism was both an intellectual obsession and a harbinger of destiny.²⁰⁶ Take, for example, the models set by nationalistic European states formed in the seventeenth and eighteenth centuries,²⁰⁷ in which the 1648 Treaty of Westphalia played a major role.²⁰⁸ These countries institutionalised the demarcation of borders through legal regulation based primarily on local legal customs. The nationalistic state did not emerge directly after the Treaty of Westphalia; rather, the demarcation of borders and attention to building international relations became more pronounced after the treaty was signed.²⁰⁹ In addition, the nationalistic state's active role in the construction of

²⁰¹ Bardo Fassbender, Anne Peters, Simone Peter, Daniel Hogger, *The Oxford Handbook of the History of International Law*, Oxford University Press, 2012, pp 116-117. Also see David Wippman, Milena Sterio, *Proceedings of the Annual Meeting-American Society of International Law* (2010) Vol. 104, pp 361-371.

²⁰² Chaim Gans, *National Self-Determination: A Sub- and Inter-Statist Conception*, *Canadian Journal of Law and Jurisprudence* (2000) Volume 13, Issue 2. Also see Dick Stegawerns, *Nationalism and Internationalism in Imperial Japan: Autonomy, Asian Brotherhood, or World Citizenship?* Routledge, 2003, pp 27-42

²⁰³ Florian Bieber, Zidas Daskalovski, *Understanding the War in Kosovo*, Routledge, 2003, pp 12-19

²⁰⁴ Hossein Askari, *Conflicts in the Persian Gulf: Origins and Evolution*, Palgrave Macmillan, 2013, p72

²⁰⁵ Philip Hadji, *The Case for Kurdish Statehood in Iraq*, *Case Western Reserve Journal of International Law* (2009) Vol. 41, No 2-3, p. 513.

²⁰⁶ Anna Moltchanova, *National Self-Determination and Justice in Multinational States*, Springer, 2009, p138. Also see Helen Catt, Michael Murphy, *Sub-State Nationalism: A Comparative Analysis of Institutional Design*, Routledge, 2004, p 20.

²⁰⁷ Chaim Gans, *National Self-Determination: A Sub- and Inter-Statist Conception*, *Canadian Journal of Law and Jurisprudenc* (2000) Vol. 13, No. 2.

²⁰⁸ John Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict*, Cambridge University Press 2010, p77.

²⁰⁹ Tanja E. Aalberts, *Constructing Sovereignty between Politics and Law*, Routledge, 2012, p 38

international law, organisations and relations deserves attention because the nationalistic state was the main actor in the international system.²¹⁰

However, the evolution of international law did not halt with the emergence of the standard of the nationalistic state. Legal jurisprudence has adopted many modern standards that are consistent with contemporary legal thought and evolved gradually following changes in the rules of international law. Such developments started during the colonial period and have continued in modern thought, which prioritises the right to self-determination and all human rights in general in international law.²¹¹

The 1933 Montevideo Convention became a fundamental building block in the development of state building in contemporary international law. Especially in the post-colonial era, the convention also played a prominent role in the jurisprudence controversy about the criteria of state-building. Montevideo Convention lays out four basic criteria for the construction of a state:

1. A permanent population
2. A defined territory
3. A government
4. The capacity to enter into relations with other states²¹²

The presence of a population obviously is necessary for the establishment of the state, and also served as a standard in traditional international law.²¹³ Notably, in traditional law, nationalism played a prominent role and formed an essential legal standard for state-

²¹⁰ Chaim Gans, *National Self-Determination: A Sub- and Inter-Statist Conception*, *Canadian Journal of Law and Jurisprudenc* (2000) Vol. 13, No. 2.

²¹¹ Alina Kaczorowska, *Public International Law*, Routledge, 2010, pp 184-195. And also see Masahiro Igarashi, *Associated Statehood in International Law*, Martinus Nijhoff Publishers, 2002, p 300. See also Gideon Boas, *Public International Law: Contemporary Principles and Perspectives*, Edward Elgar Publishing, 2012, pp 176-180. Also see Thomas Grant, *The Recognition of States: Law and Practice in Debate and Evolution*, Greenwood Publishing Group, 1999, p 30-33. See also Anne Bayefsky, *Self-determination in International Law: Quebec and Lessons Learned : Legal Opinions*, Martinus Nijhoff Publishers, 2000, p 143.

²¹² Montevideo Convention (1933), Article 1, available at (<http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>) accessed on 28/09/2013. See also Jure Vidmar, *International Legal Responses to Kosovo's Declaration of Independence*, *Vanderbilt Journal of Transnational Law* (2009) Vol. 42, No. 3.

²¹³ Thomas Grant, *The Recognition of States: Law and Practice in Debate and Evolution*, Greenwood Publishing Group, 1999, p 62-63

building.²¹⁴ However, the Montevideo Convention does not address nationalism but leaves the issue open and does not restrict the formation of multi-ethnic and multicultural states. This approach reflects the recent trend in state-building to encourage mutual respect among all races residing in a region. The state is a natural continuance of the hidden framework in which the survival of a particular community and its possession of a certain territory lead to the creation of standards for citizenship.²¹⁵

The population of a given region has taken on a stronger role and become the most dominant element in state-building.²¹⁶ If a population has diverse cultures, races and religions, the borders of the region become the foundation for combining that population within a single state; without defined borders in that region, the state could not be created.²¹⁷ This condition played a prominent role in the emergence of territorial integrity as one of the most important principles in the field of international law.²¹⁸ A direct correlation between this condition and principle appears when one considers that, without provincial borders that meet the prevailing legal standards, a population cannot engage fully in state-building and gain international recognition. Clear borders and entry requirements are necessary for a state to have good relations with its neighbours.

The third criterion of statehood is the existence of a government. Some scholars of international law have argued that this standard is the most important criteria established by the Montevideo Convention because it creates the authority upon which state-building relies. A state without government agencies such as official legislative, executive and judicial authorities cannot perform its role in serving the resident population.²¹⁹ Therefore, the state organisation has to have a relationship with its population. As well, the state cannot acquire international rights without government authorities to protect and exercise those rights. Most importantly, government authorities have obligations to the international community to respect international laws which govern relations among states.²²⁰

²¹⁴ David Armitage, *The Declaration of Independence: A Global History*, Harvard University Press, 2009, p 19.

²¹⁵ Boleslaw Adam Boczek, *International Law: A Dictionary*, Scarecrow Press, 2005, p120.

²¹⁶ John O'Brien, *International Law*, Psychology Press, 2001, pp 139-140.

²¹⁷ Alina Kaczorowska, *Public International Law*, Routledge, 2010, p 185.

²¹⁸ Duncan French, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge University Press, 2013, pp74-77.

²¹⁹ Rein Mullerson, *Ordering Anarchy: International Law in International Society*, Martinus Nijhoff Publishers, 2000, pp 165-166.

²²⁰ John Quigley, *The Statehood of Palestine : International Law in the Middle East Conflict* , Cambridge University Press 2010, p 205.

In addition, the Montevideo Convention made the ability to enter into international relations as essential to the definition of a state as the possession of a specific population, defined borders and an effective government.²²¹ The international jurisprudence which establishes this legal standard highlights international recognition as an essential condition for the maturation of the state. The state is considered part of the international community and, thereby, gains international legal standing.²²²

Clearly, all the criterion of the Montevideo Convention complement one another, and if one falls, the other will also. Thus arise many fundamental questions: Do the Montevideo Convention criteria serve as absolute standards in international law for the construction of the state? Is the state constructed through acceptance by the international community and the ability to acquire rights and obligations under international law?

Analysing the Montevideo Convention reveals that security and the rule of law are fundamental factors in state-building.²²³ The convention attempts to achieve precisely these conditions, although the core criteria are also consistent with the intellectual ideology of global security. A state's ability to enter into relations with other countries clearly demonstrates that it seeks to respect the international laws regulating such relationships. However, without a government, the state cannot exercise its powers, resist the external imposition of security and establish the internal rule of law.²²⁴

Many other international practices and laws have emerged since the Montevideo Convention. Certainly, the First and Second World Wars, colonial era and Cold War have exercised different influences on those practices and laws. These developments do not necessarily mean that the Montevideo Convention has been ignored in international legal discourse on state-building. It does, however, mean that additional criteria have emerged in international practices and contemporary legal thought and that new international organisations, both

²²¹ Gerard Kreijen, *State Failure, Sovereignty And Effectiveness: Legal Lessons from the Decolonization of Sub-Saharan Africa*, Martinus Nijhoff Publishers, 2004, p21.

²²² Martin Dixon, Robert McCorquodale, Sarah Williams, *Cases and Materials on International Law*, Oxford University Press, 2011, 137. See also Duncan French, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge University Press, 2013, pp74-77.

²²³ John H. Currie, Craig Forcese, Valerie Oosterveld, *International Law: Doctrine, Practice, and Theory*, Irwin Law, 2007, p 183.

²²⁴ Stigall Dan, *Comparative Law and State-Building: The "Organic Minimalist" Approach to Legal Reconstruction*, *Loyola of Los Angeles International & Comparative Law Review* (2007) Vol. 29, No. 1 .

regional and humanitarian, have been formed.²²⁵ Thus, one can say that the Montevideo Convention criteria are not based on the principle of realism and that these standards do not reflect the reality of international changes. Reviewing the many practices in the relations between states reveals an apparent absence of the Montevideo Convention standards and, consequently, their inability to respond to changing reality.²²⁶

Although Barrie Strain asserted that the criterion of an effective government plays a dominant role in the Montevideo Convention, many countries without a government exist.²²⁷ For example, Somalia possesses the characteristics of statehood, but its government does not exercise effective control within the borders of the state. In modern international practice,²²⁸ it is not necessary that the state have the power to impose hegemony through various official instruments, but the executive government must work to exercise effective supervision within the territory of the state and operate independently from the legislative and judicial authorities.²²⁹

In addition, the Cold War and the end of colonisation severely weakened the criterion for a state to be able to enter into relations with other countries. The division of the world into two camps put the new state in the difficult position of deciding which to join. Consequently, the new state could not engage in international relations and was not recognised by the other camp as a party in the international community.²³⁰

In the same context, Thomas Grant argued that the Montevideo Convention represents thinking particular to a certain era and does not explicitly lay out the preconditions for statehood.²³¹ The ideas in the convention are not necessarily applicable to all times, and those historically dominant in the age of the Convention have changed and become outdated,

²²⁵ Ramcharan Bertrand, UN Policies and Strategies: Preventing State Failures and Rebuilding Societies, *Journal of International Law and International Relations* (2005) Vol. 2, No. 1.

²²⁶ Matthew Craven, 'Statehood, Self-Determination and Recognition.' In: Evans, Malcolm D., (ed.), *International Law*, Oxford University Press, pp. 203-251.

²²⁷ Barrie Strain, Palestinian 'Statehood: a political pipedream but a legal reality', *Coventry Law Journal* (2005) Vol. 7, No. 2, PP 1-11.

²²⁸ Max Byrne, The Failed State and Failed State- Building: How Can a Move Away From the Failed State Discourse Inform Development in Somalia? *Birkbeck Law Review* (2013) Volume 1 issue 1.

²²⁹ Celia Taylor, A modest proposal: Statehood and sovereignty in a global age, *University of Pennsylvania Journal of International Law* (1997) Volume 18, Issue 3, pp. 745 – 809

²³⁰ Dan Stigall, Comparative Law and State-Building: The "Organic Minimalist" Approach to Legal Reconstruction, *Loyola of Los Angeles International & Comparative Law Review* (2007) Vol. 29, No. 1.

²³¹ Thomas Grant, Defining Statehood: The Montevideo Convention and its Discontents, *Columbia Journal of Transnational Law* (1999) Vol. 37, No. 2, pp. 403 – 457.

according to Grant.²³² Thus, legal analysis leads to an important question: Are the legal criteria of the Montevideo Convention accepted in international law on state-building? The standards in the convention have increasingly come under the microscope, amid global attention to human rights and the modern view that the people are the source of authority and should decide their own destiny free of the influence of the state.

Therefore, there is a tension between the standards of the Montevideo Convention which have been adopted in international law and modern trends in international law. For example, the convention did not address the role of unity between a population and the government. The presence of a government and a population is not necessarily evidence of state-building. Rather, a lack of consistent standards means that the state cannot achieve the rule of law and the high degree of security necessary to ensure internal stability, which contributes to global stability.²³³ Consequently, it can be said that effectiveness and homogeneity with a population are required for the state to enter international relations. Certainly, a lack of legitimacy, one of the most important concepts in international law, means that the state cannot participate in the international organisations working to create unity within the international community.

In addition, the Montevideo Convention did very little to address the use of military force. It does clearly prohibit the use of force in nation-building. However, such a prohibition is consistent with the fundamental ideology of the contemporary global system which seeks to achieve security and world peace.²³⁴ The Montevideo Convention has been placed on a moral pedestal in international law which works intellectually and ideologically to ensure international stability and security.²³⁵ Although Article 11 stipulates that states must not recognise any territorial acquisition made through force²³⁶ such as a foreign occupation or mass arrests,²³⁷ the convention does not stipulate compliance with this prohibition as a

²³² UN News Center, General Assembly grants Palestine non-member observer State status at UN, 29 November 2012, available at (http://www.un.org/apps/news/story.asp?NewsID=43640#.U8K1m_IdUdI) accessed 14/07/2014.

²³³ Note that the Montevideo Convention did not provide for the rights of indigenous peoples and minority nationalities who live within a region, which modern international law has granted. Thus, there is a complete absence of rights for ethnic and religious minorities in the convention.

²³⁴ Enrico Milano, *Unlawful Territorial Situations in International Law: Reconciling Effectiveness, Legality And Legitimacy*, Martinus Nijhoff Publishers, 2006, pp 102-104.

²³⁵ Karen Knop, *Diversity and Self-Determination in International Law*, Cambridge University Press, 2002, p 88

²³⁶ Montevideo Convention, art 11 <<http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>> accessed 08 November 2013.

²³⁷ James Summers, *Kosovo: A Precedent?: The Declaration of Independence, the Advisory Opinion and Implications for Statehood, Self-Determination and Minority Rights*, Martinus Nijhoff Publishers, 2011, p 74.

criterion that the state must meet. The question then is: Do states adhere to this standard, and has international law recognised states that used military force to gain statehood?

This matter, though, stops at the issue of recognition and does not influence the standards of state-building. This claim does not seek to minimise the role of recognition but to prove, contrary to international practice, the importance of recognition and, moreover, to propose recognition as a necessary criteria for the state to meet. International recognition means that the state has complied with the standards settled in international customary law.²³⁸ If the state has a population, a government and defined borders but cannot engage in international relations as a result of a lack of recognition, the state cannot meet the standards settled in customary law. This state might be able to enter into relations with other countries, but if these countries are very few and adopted these relations because of common interests, their recognition does not necessarily mean that the process of state-building has been completed or that the state has met all the necessary criteria.²³⁹ Whether a state can be considered for admission to international organisations is a modern measurement of the fulfilment of defined legal standards for the state to be an actual entity and an active member of the international community.²⁴⁰

The use of armed force in the creation of the state leads to a highly important criterion: State-building must occur in accordance with international law, especially because state-building can occur contrary to the rules of international law. Take, for example, the construction of a state that is dependent upon the military occupation of part of the territory of another state which has been established and recognised in international relations.²⁴¹ Even the fulfilment of the criterion for a population does not mean acceptance of that military occupation. The state certainly holds a prominent place in international law, and therefore, state-building, state rebuilding and any changes to the internal or external form of the state must be consistent with international law because incompatibility leads to illegality.²⁴²

²³⁸ Thomas Grant, *The Recognition of States: Law and Practice in Debate and Evolution*, Greenwood Publishing Group, 1999, pp. 6-7.

²³⁹ Differentiated Statehood? Pre-States? Palestine@the UN; EJIL and EJIL: Talk!; The Strange Case of Dr. Ivana Radacic; Looking Back at EJIL 2012 The Stats; Changes in the Masthead Our Scientific Advisory Board; In this Issue, *The European Journal of International Law* (2013) Vol. 24, No. 1, pp.1 – 11.

²⁴⁰ Aleksandar Pavkovic, Peter Radan, *Creating New States: Theory and Practice of Secession*, Ashgate Publishing, 2013 pp. 11-12.

²⁴¹ Richard Caplan, *Exit Strategies and State Building*, Oxford University Press, 2012, pp. 12-15

²⁴² James Crawford, Martti Koskenniemi, *The Cambridge Companion to International Law*, Cambridge University Press, 2012, p. 105.

Most importantly, international public law is an acceptable model for organising international relations. It is also the foundation upon which the principles and concepts of international rights and obligations are based.²⁴³ However, the importance of the criteria of the Montevideo Convention in international law with respect to statehood has decreased. Greater importance has been assigned to the criterion of non-violation of international law in the construction of the state, that is, the state's acceptance of international law.²⁴⁴ This standard means that the state respects international law and maintains its international relations within the framework of international law. Compliance with this standard ensures greater harmony between the intellectual ideology of political power and the traditional and modern goals of public international law. More importantly, adherence to this standard maintains security, international peace, respect for human rights and the prohibition on the use of force except in cases defined by international law.²⁴⁵

The Montevideo Convention clearly did not focus on international law as a standard model for a state to be considered to have fulfilled the required legal standards to gain legitimacy. The convention set standards that were more formal than realistic or practical.²⁴⁶ A state, however, gains effectiveness through several factors, including unity among individuals and between individuals and the government. In addition, the international community must accept this nascent entity as a state. There is no doubt that effectiveness is required for a state to gain legitimacy because international public law works to organise international relations between states, to maintain security and world peace and to monitor whether states and individuals fulfil their rights and obligations under this law.²⁴⁷ A state that violates the rules of international law, especially as it first emerges, makes itself illegal, even if its actions were consistent with the more formal standards.²⁴⁸

²⁴³ Hans Kelsen, *The legal state in international law*, The Lawbook Exchange Ltd., 2009, pp 248

²⁴⁴ Christian Hillgruber, *The Admission of New States to the International Community*, *European Journal of International Law* (1998) Vol. 9, No. 3, pp. 491 - 509 .

²⁴⁵ Thomas Grant, *The Recognition of States: Law and Practice in Debate and Evolution*, Greenwood Publishing Group, 1999, pp.103- 180.

²⁴⁶ Thomas Grantd , *Defining Statehood: The Montevideo Convention and its Discontents*, *Columbia Journal of Transnational Law* (1999) Vol. 37, No. 2, pp. 403 – 457.

²⁴⁷ Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice*, Hart Publishing Limited, 2013, pp. 24- 116.

²⁴⁸ Anne Peters, *Statehood after 1989: 'Effectivités' between Legality and Virtuality*, *Proceedings of the European Society of International Law* (2010) Vol. 3, No. 1.

Thus, we can say that the Montevideo Convention is incomplete and neither realistic nor practical. The concept and the construction of the state depend more upon realism and international relations than formal standards. It is extremely important that these criteria be flexible and in harmony with international changes.²⁴⁹ Moreover, criteria should ensure that the new state respects international law and that its creation does not violate the essence of public international law, which is the achievement of international peace and security.²⁵⁰ International customary law is clearly broader and more comprehensive than the Montevideo Convention because it derives from the practical reality of international practices. In addition, international customary is more in line with and even aided in the development of the principles and goals of international law. In my view, it has been proven with certainty that the legal criteria for state-building laid out in the Montevideo Convention are fraught with difficulties and must be transformed based on changes in legal principles and theory so that they are consistent with shifts in contemporary intellectual legal thought.

2.4 The right to political self-determination and the criteria for statehood

Traditionally, states have been seen as the core of international law and they are only party governed by international law. However, this view is changing gradually as international law permits individuals and groups to claim legal characteristics.²⁵¹ Such parties have taken an active role in issues pertaining to international law, indeed becoming some of the most important actors in this arena.²⁵² It is likely that this change will lead to a violent collision between the right to claim self-determination and the traditional ideas advocated in international law, which assign priority to states without considering the characteristics of the state and whether a sense of relative unity exists between the state and the people it governs. These traditional ideas are evident in the Montevideo Convention. For example, the Montevideo Convention does not acknowledge the government's authority as being derived

²⁴⁹ David Galbreatha, *Dealing with diversity in international law: Self-determination and statehood*, *The International Journal of Human Rights* (2005) Vol. 9, No. 4, pp. 539 – 550.

²⁵⁰ Christian Hillgruber, *The Admission of New States to the International Community*, *European Journal of International Law* (1998) Vol. 9, No. 3, pp. 491 – 509.

²⁵¹ Milena Sterio, *A Grotian moment: changes in the legal theory of statehood*, *Denver Journal of International Law and Policy*, (2001) Vol. 39, No. 2.

²⁵² Celia Taylor, *A modest proposal: Statehood and sovereignty in a global age*, *University of Pennsylvania Journal of International Economic Law* (1997) Vol. 18, No. 3, pp. 745–809.

from the people; rather, it views the government's authority as being imposed upon the people.²⁵³

Legal studies on the right of self-determination and the state have concentrated on the external form of the state and secession from the state. This focus was a consequence of international practises that dominated the world. Especially during the ages of colonialism and post-colonialism, many ethnic groups existed within regions not recognised internationally or among split into different countries by international powers. This situation was the result of colonialism and some international agreements concluded by the major powers, such as the Sykes-Picot Agreement.²⁵⁴

However, a new development on the international level bases such practices on the right of self-determination and is powered by popular demand to determine the political form and type of one's governing regime.²⁵⁵ Thus, one can say that gradual, significant alterations have occurred in the general model of the state, starting in the age of the tribe and continuing through nationalism and its impact on the formation of organised society. The most recent changes gave rise to the modern state which is based on the spirit of equality and social justice, the involvement of the people in decision-making and respect for other religions and ethnicities.²⁵⁶

Thus, the system of the modern world no longer most highly values the external form of the state. The new world order takes as its foundation the individual and individual rights, which have applications for many aspects and subjects in international law. The discourse of human rights discourse recently has become an extremely important aspect in international law, which can no longer have effect in the world without taking into account this discourse.²⁵⁷ The state now demonstrates respect for international law primarily by ensuring that the legal

²⁵³ Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession With Formulations of Post-Colonial National Identity*, Martinus Nijhoff Publishers, 2000, p. 80.

²⁵⁴ Edward McWhinney, *Self-Determination of Peoples and Plural-ethnic States in Contemporary International Law: Failed States, Nation-building and the Alternative, Federal Option*, Martinus Nijhoff Publishers, 2007, p 3 . See also David Galbreath, *Dealing with diversity in international law: Self-determination and statehood*, *The International Journal of Human Rights* (2005) Vol. 9, No. 4.

²⁵⁵ Luiz Carlos, Bresser-Pereira, *Democracy and Public Management Reform: Building the Republican State*, OUP Oxford, 2004, pp 65- 190.

²⁵⁶ Martti Koskeniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, *The International and Comparative Law Quarterly* (2004) Vol. 43, No. 2, pp. 241 – 269.

²⁵⁷ Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice*, Hart Publishing Limited, 2013, pp. 24- 116.

and political processes in all countries are based on granting human rights.²⁵⁸ Beate Rudolf contended that, at the present time, parties in the international community maintain international public law not only by imposing legal rules that demand full respect for human rights but, more so, by enforcing these rules and creating safeguards against the violation of human rights.²⁵⁹

Consequently, the criteria for state-building and rebuilding must reflect these changes. These standards must be consistent with the requirements of international law and compatible with the aspirations of the peoples of the world for international peace and security. Drawing guidance from the UN charter, scholars of public international law have created preliminary rules founded on three basic principles: peaceful coexistence, the maintenance of international peace and the avoidance of the use or threat of armed force.²⁶⁰ The fulfilment of those principles, in particular the principle of international peace and security, imposes no fundamental restrictions on the right of political self-determination. Realising these principles in the right way aids in achieving peace because it ensures that there are no internal conflicts, dictatorships or repressive governments. In this sense, the right of political self-determination has a practical impact on state-building and rebuilding through its adoption in the legal literature, customary international law and international treaties and conventions, as explained in the first chapter.²⁶¹

However, the right to self-determination should prompt a reversal in the framework of international legal theory and must also effect formal changes in order to acquire tangible and moral force in customary international law. The right of political self-determination can gain this authority and become a necessity for state-building and rebuilding by playing an active role in international practises that support the creation of effective customary rules. Then, a state will not be considered legitimate without achieving this critical standard.²⁶² The essence of this standard is realised through creating consensus and harmony between the people and

²⁵⁸ Martti Koskenniemi, *National Self-Determination Today: Problems of Legal Theory and Practice*, *The International and Comparative Law Quarterly* (2004) Vol. 43, No. 2, pp. 241 – 269.

²⁵⁹ Beate Rudolf, *Non-State Actors in Areas of Limited Statehood as Addressees of Public International Law Norms on Governance*, ILA Workshop Leuven (26-28 March, 2009).

²⁶⁰ James Crawford, *The Criteria for Statehood in International Law*, *British Yearbook of International Law*, 1978, pp. 93-182.

²⁶¹ Karen Knop, *Diversity and Self-Determination in International Law*, Cambridge University Press, 2002, pp. 20, 65.

²⁶² Milena Sterio, *The Case of Kosovo: Self-Determination, Secession, and Statehood Under International Law*, *Proceedings of the Annual Meeting (American Society of International Law 2010)* Vol. 104, pp.361-371 .

the government, ensuring that the government is not mandatory or imposed on the people and that it is the result of the people's choice.²⁶³

When examining the actual practises of state-building as encoded in legal standards, we find that, under the model of nationalism, the state first claimed legitimacy through the standard of possessing a population. Since then, fundamental changes have occurred, especially in areas where colonialism gave rise to new frameworks not reliant on the formal terms of nationalism. More complex systems and political sharing prompted the emergence of new criteria for state-building and rebuilding.²⁶⁴ These standards derived their legal basis from the Montevideo Convention and from stricter, more formal standards in customary international law, such as acceptance and compliance with international law and formalisation of statehood through recognition from the international community.²⁶⁵ Next, the world entered a fresh, complex stage with the end of colonialism and the emergence of the Cold War. This age saw the birth of a real right to political self-determination through its enshrinement in international law. By the end of the Cold War, this right had been widely embraced and become one of the important human rights in international law because of the actual practices of international organisations and other parties in international law.²⁶⁶

This recent importance does not mean that the rights to self-determination and to participate in political decision-making have been absent in any stage of legal history. However, it can be argued that these rights were born as laws written in the colonial period and the World War II era and later matured and were confirmed through international adoption and practice during the Cold War.²⁶⁷ For example, to join the European Union (EU), nation-states have demonstrating recognition of the right to political self-determination by conducting free and fair elections.²⁶⁸ As well, European nation-states have experienced advanced stages of various popular revolutions demanding the right to political participation, such as the French

²⁶³ Obiora Chinedu Okafor, *After Martyrdom: International Law, Sub-State Groups, and the Construction of Legitimate Statehood in Africa*, *Harvard International Law Journal* (2008) Vol. 41, No. 2, pp. 503 – 528.

²⁶⁴ Martti Koskenniemi, *The Future of Statehood*, *The Harvard International Law Journal* (1991) Vol. 32, No. 2, pp. 397 – 410.

²⁶⁵ Milena Sterio, *The Case of Kosovo: Self-Determination, Secession, and Statehood Under International Law*, *Proceedings of the Annual Meeting (American Society of International Law 2010)* Vol. 104, pp.361-371.

²⁶⁶ David Galbreath, *Dealing with diversity in international law: Self-determination and statehood*, *The International Journal of Human Rights* (2005) Vol. 9, No. 4, pp. 539 – 550.

²⁶⁷ *Comparative Law and State-Building: The "Organic Minimalist" Approach to Legal Reconstruction*, *Loyola of Los Angeles International & Comparative Law Review* (2007) Vol. 29, No. 1.

²⁶⁸ Richard Rose, *Understanding Post-Communist Transformation: A Bottom Up Approach*, Routledge, 2008, pp. 181-182.

Revolution and the Bolshevik Revolution, which led to internal changes in the form of the state.²⁶⁹

Moreover, it must be pointed out that the state initially is the result of popular struggles based on the individual. State-building occurs as groups of individuals come together in order to found a political entity that represents them, regulates their relationships and preserves their rights and obligations as they organise on the local and international levels. This popular struggle began with and resulted in the formation of the nation-state and continued into the colonial era when peoples fought for independence and to create independent political entities.²⁷⁰ After the colonial period, this struggle became manifested as the fight against repressive governments to gain political rights and the ability to participate in decision-making. The struggle to end the colonial age has faded but gave rise to a new struggle to eliminate all forms of dictatorial governments and to achieve social justice and respect for human rights. This historical transformation played a pivotal role in the formation of the state in contemporary international law.²⁷¹

When looking at many former colonial states, we find an important factor that has affected the form of the state in the postcolonial era: that of the warlord, who led many of the wars for independence from colonial powers. Unfortunately, at the end of such struggles, the political system often fell into the hands of warlords who continued to hold onto power and refused to grant the people political rights or to allow them to participate in decision-making.²⁷² Thus, the outcomes of these struggles contributed to the weakening of the social justice model and supported repressive governments. From this point began a new struggle to get rid of dictatorial governments by appealing to the right of political self-determination. This right thus became incorporated into the system of rebuilding the state through legal rules based on the global discourse that promotes human rights and human dignity. Thus, one can say that,

²⁶⁹ Michel Rosenfeld, *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, 2012, p. 488.

²⁷⁰ Luiz Carlos Bresser-Pereira, *Democracy and Public Management Reform: Building the Republican State*, OUP Oxford, 2004, pp 65- 190.

²⁷¹ Christopher Clapham, *Degrees of statehood*, *Review of International Studies* (1998) Vol. 24, No. 2, pp. 143 – 157.

²⁷² Kathleen Reedy, *Customary law and its challenges to Afghan statehood*, *Military Review* (2012) Vol. 92, No. 5; also see Milena Sterio, *The Kosovar declaration of independence: "botching the Balkans" or respecting international law?* *Georgia Journal of International and Comparative Law* (2009) Vol. 37, No. 2.

after the end of the Cold War, the state-building criteria underwent fundamental changes linked to the right of political self-determination.²⁷³

2.4.1 Legal criteria for statehood after the Cold War

The Cold War unarguably played an active role in halting the development of public international law by causing many of the rules of law to be broken. In addition, international interests and the conflicts of intellectual politics reined in the galloping development of public international law.²⁷⁴ In the waning of the colonial era, the major powers encouraged the development of political parties loyal to the government, and the major superpowers engaged in a close race to attract the new states emerging on the international map. The Soviet Union attempted to support the ideas of communism by building states through communist parties and warlords. At the same time, the United States adopted a hostile stance towards the Soviet Union's efforts and undertook similar steps to support regimes opposed to the ideas of Communism.²⁷⁵

However, the end of the Cold War saw the disintegration of the republics of the Soviet Union and Yugoslavia, creating the opportunity to put sophisticated international practises to effect in the rebuilding of states. At the same time, the international community devoted itself to the concept of democracy and consequently gave the right of political self-determination a more active role. This trend became evident as from the disintegration and dissolution of these countries came a consensual framework driven by peoples who desired to participate in the formation of new political entities.²⁷⁶ For example, the Belarusian people did not oppose the Belarusian Parliament's decision to declare the Republic of Belarus independent from the

²⁷³ Besfort Rrecaj, *The Right to Self-Determination and Statehood: The Case of Kosovo*, Bepress Legal Series, 2006.

²⁷⁴ Boleslaw Adam Boczek, *International Law: A Dictionary*, Oxford Press, 2005, pp. 5-96. Also see Rowena Maguire, Bridget Lewis, Charles Sampford, *Shifting Global Powers and International Law: Challenges and Opportunities*, Routledge, 2013, PP. 99-100.

²⁷⁵ Gideon Boas, *Public International Law: Contemporary Principles and Perspectives*, Edward Elgar Publishing, 2012, pp. 21-22. Also see Wang Tieya, Sienho Yee, *International Law in the Post-Cold War World: Essays in Memory of Li Haopei*, Routledge, 2001, p 23.

²⁷⁶ Christian Hillgruber, *The admission of new states to the international community*, *European Journal of International Law* (1998) Vol. 9, No. 3, pp. 491 – 509.

Soviet Union.²⁷⁷ In some countries, the people voted on resolutions for independence, as in Latvia where 73% of the Latvian people supported independence.²⁷⁸ Moreover, the mother state of Russia did not oppose the wishes of the people, and the international community, too, supported those wishes. The new states had to meet conventional state-building criteria, but that does not undermine the pivotal role played by unanimity between the people and their new governments.²⁷⁹ If the people did not accept these governments, it would lead to the disintegration of the state.²⁸⁰

The maturation of the right of political self-determination entered an important historic stage as international practises increasingly complied with global trends that emphasised fulfilling the wishes of the people through political self-determination.²⁸¹ As well, international law tended to prohibit the building of a repressive state and accepting such a state as an active player in the international arena.²⁸² This development was evident in the state rebuilding of communist countries in Eastern Europe, such as Bulgaria and Romania which gained international support to end repressive rule and rebuild through popular participation in decision-making and choosing a governance model.²⁸³ Those practises have evolved and been enshrined in international conventions and customary international law, such as the Commission on Human Rights Resolution No. 2000/47 (2000)²⁸⁴ and No. 2002/47.²⁸⁵ In

²⁷⁷ The History of Diplomatic Relations between Finland and Latvia

<<http://www.finland.lv/public/default.aspx?nodeid=38439&contentlan=2&culture=en-US>> accessed 28 October 2013.

²⁷⁸ Ibid .

²⁷⁹ Joseph Weiler, Differentiated Statehood? Pre-States? Palestine@the UN; EJIL and EJIL: Talk!; The Strange Case of Dr. Ivana Radacic; Looking Back at EJIL 2012 The Stats; Changes in the Masthead Our Scientific Advisory Board; In this Issue, The European Journal of International Law (2013) Vol. 24, No. 1 , pp.1 – 11.

²⁸⁰ Beate Rudolf, Non-State Actors in Areas of Limited Statehood as Addressees of Public International Law Norms on Governance, ILA Workshop Leuven (26-28 March, 2009).

²⁸¹ David J. Galbreatha, Dealing with diversity in international law: Self-determination and statehood, The International Journal of Human Rights (2005) Vol. 9, No. 4, pp. 539 – 550.

²⁸² Obiora Chinedu Okafor, After Martyrdom: International Law, Sub-State Groups, and the Construction of Legitimate Statehood in Africa, Harvard International Law Journal (2000) Vol. 41, No. 2, pp. 503 – 528.

²⁸³ The Romanian people led a massive uprising against the dictatorship of Nicolae Ceausescu and on 20 May 1990 held their first parliamentary elections under international monitoring, which were won by Ion Iliescu. See Danijela Dolenec, Democratic Institutions and Authoritarian Rule in Southeast Europe (ECPR Press 2013) p.164.

²⁸⁴ United Nations Commission on Human Rights Res No. 2000/47 (April 2000)

<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CC8QFjAA&url=http%3A%2F%2Fap.ohchr.org%2Fdocuments%2FE%2FCHR%2Fresolutions%2FE-CN_4-RES-2000-47.doc&ei=akXLUqnCKMe70QWk4HwDw&usq=AfQjCNEtSAPN4aFN27CxdyKXXC395AJatg&bvm=bv.58187178,d.d2k> accessed 16 October/2013.

²⁸⁵ United Nations Commission on Human Rights, Resolution No. 2002/47(April 2002)

<[http://www.unhcr.ch/Huridocda/Huridoca.nsf/\(Symbol\)/E.CN.4.RES.2002.47.En?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/(Symbol)/E.CN.4.RES.2002.47.En?Opendocument)> accessed 15 October 2013.

addition, the UN has supported many states in rebuilding themselves according to the concept of the right of political self-determination, from Haiti in 1994,²⁸⁶ for example, down to the revolutions of the Arab Spring.²⁸⁷

Notably, since 1989, the conceptualisation of human conflict has transitioned from an era of national disputes to one of ethnic strife and religious struggles. An emerging concept holds that individuals should be prepared to die for freedom and to uphold human dignity.²⁸⁸ Accordingly, individuals should not be subjected to repressive governments or dictatorships, whatever the diverse ethnic groups, religions and ideas within the boundaries of a state. Belligerents might still advance legal arguments, such as that a state has the right to defend its territory against another state, and certain groups defend themselves in response to a racially motivated attack.²⁸⁹ However, in a conflict, contemporary legal arguments recognise the right to political self-determination and do not accept contrary claims made by governments or repressive dictatorships. Therefore, the right of political self-determination and its merits enjoy a high position in contemporary international law and practise, which endows it with strong influence on state-building and rebuilding.

One must not lose sight of the historical period in which emerged the right to political self-determination and its impact on state-building, whether through legal rules, such as the International Covenant on Civil and Political Rights²⁹⁰ and the Declaration of Helsinki,²⁹¹ or through international practices, such as the international community's rejection of the racist government in South Africa, or South Rhodesia.²⁹² This period also saw the violent collision of the Cold War, which affected the development of this right and made it an effective

²⁸⁶ David Schweigman, *The Authority of the Security Council Under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice*, Martinus Nijhoff Publishers, 2001, p. 138

²⁸⁷ Efraim Inbar, *The Arab Spring, Democracy and Security: Domestic and International Ramifications*, Routledge, 2013, pp. 51-125.

²⁸⁸ Luiz Carlos Bresser-Pereira, *Democracy and Public Management Reform: Building the Republican State*, OUP Oxford, 2004, pp. 40- 110.

²⁸⁹ Matthew Craven, 'Statehood, Self-Determination and Recognition.' In: Evans, Malcolm D. and *International Law*, Oxford University Press, pp.34-98.

²⁹⁰ *Opinions*, Martinus, Nijhoff Publishers, 2000, p 2.

²⁹¹ Christian Hillgruber, *The admission of new states to the international community*, *European Journal of International Law* (1998) Vol. 9, No. 3, pp. 491 – 509.

²⁹² Jure Vidmar, *Territorial integrity and the law of statehood*, *The George Washington International Law Review* (2012) Vol. 44, No. 4.

standard for building or rebuilding the state. Thus, the period following the end of the Cold War was more stable, and the right of political self-determination became more visible.²⁹³

This development was reflected by the emergence of a new standard in the international arena, that of unanimity between the people and the government. International law no longer accepts dictatorial governments which are not consistent with the aspirations of their people.²⁹⁴ Governments also must also popular desire to participate in the management of the country in order to collectively achieve social justice and to realise the human rights agreed upon in international law.²⁹⁵ Along these lines, Robert Delahunty claimed that, at the present time, we accept states' territorial boundaries only because of history. However, if a state no longer maintains an effective unity between its people and its government, this means that the state is not acceptable from the perspective of the international community.²⁹⁶

Almost all human rights settled in international law presuppose the existence of domestic laws, rules and institutions to ensure these rights. As well, the government cannot neglect respect for the rule of law for all the people within the boundaries of the state, whether they belong to the masses or to the ruling authorities. The government must also establish an independent judicial system and take other measures to preserve human rights, uphold human dignity and achieve social justice.

Undoubtedly, many fundamental factors beyond the end of the Cold War contributed to the emergence and growing importance of this new standard. Among these are the evolution of human thought to be more respectful of human rights and to reject racial and religious extremism,²⁹⁷ the material factors influenced by globalisation and the role of the non-governmental actors in international law. The latter factors might have acquired the most prominence in state-building and rebuilding by taking on an active role in the formation of modern international law, extending to the domestic laws of countries themselves.

²⁹³ Christopher Clapham, Degrees of statehood, *Review of International Studies* (1998) Vol. 24, No. 2, pp. 143 – 157.

²⁹⁴ David J. Galbreatha, Dealing with diversity in international law: Self-determination and statehood, *The International Journal of Human Rights* (2005) Vol. 9, No. 4, pp. 539 – 550.

²⁹⁵ Thomas Grant, Defining Statehood: The Montevideo Convention and its Discontents, *Columbia Journal of Transnational Law* (1999) Vol. 37, No. 2, pp. 403 – 457.

²⁹⁶ Robert Delahunty, Statehood and the Third Geneva Convention. (The Laws of War: Past, Present, and Future) *Virginia Journal of International Law* (2005) Vol. 46, No. 1.

²⁹⁷ Cord Schmelzle, Effectiveness and Legitimacy in Areas of Limited Statehood, Governance in Areas of Limited Statehood, SFB-Governance Working Paper No. 26, 2012 .

2.4.2 The role of non-state actors in the construction of criteria for the modern state

Since the end of World War II, the international community has witnessed the establishment of numerous international legal organisations.²⁹⁸ Some organisations are based on regional frameworks and others on an objective framework that adopts a particular issue as the central work of the organisation. Regional organisations have had a significant influence on the development of the rules of international law.²⁹⁹ As the world witnesses the actions of many regional organisations such as the EU, AU and Arab League, it is possible to see that these organisations have been concerned with human rights and made these rights a pillar of their legal rules.³⁰⁰ Take, for example, the EU's Charter of Fundamental Rights or the American Declaration of the Rights and Duties of Man.

In addition, non-regional international organisations have played an important role in the adoption of many rights in international law. It has been argued that these organisations have also had a large role in establishing the rules of international law regarding human rights.³⁰¹ Consider, for example, the aims of the International Labour Organisation, the International Organisation for Migration or the UN High Commissioner for Human Rights. In addition, groups around the world, such as Human Rights Watch and the International Federation for Human Rights, monitor human rights on the international level,³⁰² while others such as the Egyptian Organisation for Human Rights and the Tunisian League for the Defence of Human Rights monitor human rights within the state itself.³⁰³

²⁹⁸ For example: the High Commissioner for Human Rights, the United Nations High Commissioner for Refugees, Amnesty International, Inter-American Commission on Human Rights and Human Rights Watch.

²⁹⁹ Erika De Wet, *The Chapter VII Powers of the United Nations Security Council*, Hart Publishing, 2004, pp. 90-92.

³⁰⁰ Joel Peters, *European Union, the African Union and the Arab League human rights*, Lexington Books, 2012, pp 15-48.

³⁰¹ Jean D'Aspremont, *Participants in the International Legal System: Multiple Perspectives on Non-State Actors in International Law*, Taylor & Francis, 2011, p 110.

³⁰² Anna-Karin Lindblom, *Non-Governmental Organisations in International Law*, Cambridge University Press, 2005, pp. 502-526.

³⁰³ *The Arab Human Development Report 2005: Towards the Rise of Women in the Arab World*, United Nations Development Programme. Regional Bureau for Arab States, Stanford University Press, 2006, pp 130-133.

Despite the existence of all these organisations, the most prominent non-state actor within the state which draws the attention of the international community is the organised opposition.³⁰⁴ The international community often negotiates with the opposition, which implies recognition and acceptance of these actors within the state.³⁰⁵ More importantly, this recognition means that the international community accepts the legal arguments that the opposition has advanced.³⁰⁶ There is no doubt that, within the model of the right of political self-determination, the claim to end repressive rule and the call for political participation in decision-making and democratic elections are the most important arguments put forth by the opposition.

There is no doubt that the active roles of the non-state actors are not achieved if they are not accepted by the international community. This acceptance means that the measures that are carried out by these actors are positively received by the international community, such as a request from a regional organization to impose economic sanctions on a certain state. This situation leads to the conclusion that these actors become a subject in international law³⁰⁷ because their actions contribute to the development of international law through the issuance of legal rules and resolutions within the framework of the organization. Therefore, there is no doubt that these rules and resolutions are consistent with contemporary legal thought.³⁰⁸

Moreover, these non-state actors cannot work to support the legal rights of the people without a foundation of a popular will demanding those rights. This means that, if the government were a dictatorship and violated the rules of international law on human rights but the people did not express a desire to change this government, non-governmental actors, both within the country and abroad, could not play a direct role in this case and change the country's leadership. It is important to point out that non-state actors have rights and obligations

³⁰⁴ Liesbeth Zegveld, *Accountability of Armed Opposition Groups in International Law*, Cambridge University Press, 2002, pp.190-227.

³⁰⁵ Bob Reinalda, *The Ashgate Research Companion to Non-State Actors*, Ashgate 2011, pp. 148-150. Also see Christopher Clapham, *Degrees of statehood*, *Review of International Studies* (1998) Vol. 24, No. 2, pp. 143 – 157.

³⁰⁶ International Institute of Humanitarian Law, *Non-state Actors and International Humanitarian Law. Organized Armed Groups: a Challenge for the 21st Century*, Franco Angeli, 2010, pp. 96-101.

³⁰⁷ Beate Rudolf, *Non-State Actors in Areas of Limited Statehood as Addressees of Public International Law Norms on Governance*, IIA Workshop Leuven (26-28 March, 2009). Also see Cord Schmelzle, *Effectiveness and Legitimacy in Areas of Limited Statehood*, *Governance in Areas of Limited Statehood*, SFB-Governance Working Paper (2012) No. 26.

³⁰⁸ Math Noortmann, Cedric Ryngaert, *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers*, Ashgate Publishing, 2013, pp. 180-184.

because individuals who are represented by these actors or serve as their agents are parties to and are subject to rule by international law.³⁰⁹

This approach is reinforced by Article 9 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, which stipulates that ‘the conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact exercising elements of the governmental authority in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority’.³¹⁰ Thus, this approach gives non-governmental actors within the state, such as opposition movements, legal responsibility for their actions which carries with it the obligation to operate within the framework of international law.

However, this does not diminish the role of non-state actors in the promotion of human rights or negate the link between these rights and state-building. The building of the state should take into consideration the practical reality of the role of non-state actors in international law.³¹¹ Clearly, whether those actors are regional or domestic, legal organisations or opposition movements, non-state actors have a strong influence international practices.³¹² For example, the Syrian opposition coalition has received international acceptance and participated in negotiations concerning the Syrian revolution, meeting popular demands to rebuild the country within a democratic framework.³¹³ Similarly, on 2 February 2011, Amnesty International accused the UN Security Council of failing to apply the law to protect protesters in Libya who demanded an end to repressive rule.³¹⁴

³⁰⁹ Celia R. Taylor, A modest proposal: Statehood and sovereignty in a global age, *University of Pennsylvania Journal of International Economic Law* (1997) Vol. 18, No. 3, pp. 745 – 809.

³¹⁰ The Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001), Art 9 <<http://legal.un.org/avl/ha/rsiwa/rsiwa.html>> accessed 28 November 2013.

³¹¹ George J. Andreopoulos, Zehra F. Kabasakal Arat, Peter H. Juviler, *Non-state Actors in the Human Rights Universe*, Kumarian Press, 2006, pp. 14-56.

³¹² Math Noortmann, Cedric Ryngaert, *Non-State Actor Dynamics in International Law: From Law-Takers to Law-Makers*, Ashgate Publishing, Ltd., 2013, pp. 70-71. See also Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, *International Human Rights Law*, Oxford University Press, 2013, pp 531-535

³¹³ Bente Scheller, *The Wisdom of Syria's Waiting Game: Foreign Policy Under the Assad's*, Hurst Publishers, 2013, pp 92-96. See also Associated Press, ‘Syrian Opposition Gets Lessons in High-Level Negotiation ahead of Geneva Peace Talks Next Year’ (Fox News 9 December 2013) <<http://www.foxnews.com/world/2013/12/09/syrian-opposition-gets-lessons-in-high-level-negotiating-ahead-geneva-peace/>> accessed 10 December 2013.

³¹⁴ World Federalist Movement, ‘The Crisis in Libya’ (International Coalition for the Responsibility to Protect) <<http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya>> accessed 04 November 2013.

It is not yet clear whether non-state actors are as important as other factors in the international arena which affect the re-imagining of standards for the rebuilding of the state. However, non-state actors have influenced international legal discourse because contemporary thought takes a significant interest in these entities, especially international organisations.³¹⁵ This interest stems from the organisations' work to observe and monitor legal rules and to undertake research on the legal rules affecting humans, their relations and the surrounding environment. Thus, the role of non-state actors cannot be overestimated. Unanimity between the government and the people is required for the state to meet the criteria for good governance, and non-state actors work to monitor and promote precisely these activities.³¹⁶

Non-state actors not only exercise influence in the supervision of those rights, but they also play a prominent role in determining the legitimacy of the state and the extent of its interactions with the international community.³¹⁷ This influence can be observed in the reasons for dropping a state as a member of a particular organisation. For example, Article No. 30 of the Constitutive Act of the AU states that 'governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union'.³¹⁸ When discussing recognition, it must be emphasised that international recognition is tangible evidence of the legitimacy of the state which enables it to become a party to international law.³¹⁹

Thus, through the legal standards for state-building and rebuilding emerges the role of recognition in the acceptance of the state. I advance the argument that international recognition of the state is a real model for the fulfilment of the criteria for construction of the state. The study of recognition in international law and its impact on standards of state-building, in particular the standard of homogeneity and integration, must be expanded because recognition is an effective means of realising political self-determination.³²⁰

³¹⁵ Julia Raue, Patrick Sutter, *Facets and Practices of State-Building*, Martinus Nijhoff Publishers, 2009, p. 33.

³¹⁶ Dan E. Stigall, *Loyola of Los Angeles International & Comparative Law Review* (2007) Vol. 29, No. 1.

³¹⁷ Helmut Breitmeier, *The Legitimacy of International Regimes*, Ashgate Publishing, Ltd., 2008, p 39.

³¹⁸ Constitutive Act of the African Union (2000) (AU Constitutive Act) art 30
<http://www.au.int/en/about/constitutive_act>.

³¹⁹ Joseph Weiler, *Differentiated Statehood? Pre-States? Palestine@the UN; EJIL and EJIL: Talk!; The Strange Case of Dr. Ivana Radacic; Looking Back at EJIL 2012 The Stats; Changes in the Masthead Our Scientific Advisory Board; In this Issue*, *The European Journal of International Law* (2013) Vol. 24, No. 1, pp.1 – 11.

³²⁰ Thomas D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution*, *The American Journal of International Law* (2001) Vol. 95, No. 1, pp. 252 – 255. See also Milena Sterio, *The Kosovar*

2.5 International recognition and the right of political self-determination in the criteria for statehood

In the legal literature, recognition is only an expression of the will of the state that a certain legal status has been achieved.³²¹ Institutes of international law have defined recognition as the ‘free act by which one or more States acknowledge the existence on a definite territory of a human society politically organised, independent of any other existing State, and capable of observing the obligations of international law’.³²² Thus, it is clear that there is a correlation between the state standards and legal recognition that serves as concrete evidence to support the acceptance of a state by the international community.

The power of legal recognition has grown, and the development of international organisations has driven its increasing legal role in the process of state-building and rebuilding. It can be argued that the creation of the UN in 1945 gave the impetus to create the international organisations or non-state actors which subsequently took on an active role in the acceptance of the state by the international community.³²³ These non-state organisations and actors became parties to international law because it governs their relationship with other entities. Across the continents of the world, one finds many regional organisations such as the EU, Association of Southeast Asian Nations and AU.³²⁴ In addition to these numerous regional organisations, others such as the World Trade Organisation and Non-Aligned Movement specialise in addressing subjects of particular concern in international public affairs.³²⁵

This argument does not seek to underestimate the role of recognition before the emergence of such organisations but, rather, to emphasise that their emergence made recognition instrumental as acceptable concrete evidence to meet the legal criteria for state-building and rebuilding.³²⁶ Before the existence of international organisations, such relations were based

declaration of independence: "botching the Balkans" or respecting international law? Georgia Journal of International and Comparative Law (2009) Vol. 37, No. 2.

³²¹ Boleslaw Adam Boczek, *International Law: A Dictionary*, Scarecrow Press, 2005, pp. 106-110.

³²² Institut De Droit International: Resolutions Concerning the Recognition of New States and New Governments, *The American Journal of International Law*, Vol. 30, No. 19, pp. 185-187.

³²³ Martin Dixon, *Textbook on International Law*, Oxford University Press, 2013, pp 115-116.

³²⁴ John Quigley, *The Statehood of Palestine : International Law in the Middle East Conflict*, Cambridge University Press 2010, p. 239.

³²⁵ Masahiro Igarashi, *Associated Statehood in International Law*, Martinus Nijhoff Publishers, 2002, p. 388.

³²⁶ Anne-Marie Gardner, *Democratic Governance and Non-State Actors*, Palgrave Macmillan, 2011, p. 5.

on the importance of various international interests.³²⁷ The development of such organisations thus made the legal system of international relations more harmonious with contemporary legal thought because these organisations are built on the pattern of contemporary legal thought, and most of all, they must act collectively, not unilaterally.³²⁸ Unilateral recognition might be based on partisan, ideological or ethnic interests or such similarities with other countries. Collective recognition, however, guarantees that the state has fulfilled international law and committed itself to carrying out the provisions of this law.

It can be said that, in contemporary international law, international organisations have become a crucial component for granting the state the right to exercise legal capacities. Applicants to join any particular international organisation must comply with the legal and political values of the other countries in that organisation.³²⁹ For example, Article 4 of the UN Charter states that ‘membership in the United Nations (UN) is open to all other peace-loving states which accept the obligations contained in the present Charter’.³³⁰ Therefore, it is difficult to accept a state that fails to honour the obligations outlined in the present Charter joining the UN. Turmoil within the state does not excuse the state from fulfilling these obligations because the disorder might well be the result of a popular uprising against dictatorial rule. Here, note that the acceptance of the applicant depends on the construction of the new state. However, what standards apply during the rebuilding of a country? Specifically, what role does the right to political self-determination play?

The answer to this question comes from Article 1 of the UN Charter which lays out the purposes of the organisation. The second paragraph of Article 1 asserts the need to respect the principle that all peoples have equal rights and that each has the right to self-determination.³³¹ Article IV explicitly states that UN membership also requires compliance with the rules contained in the charter.³³² As member states have committed to abide by the rules in the charter, the country that does not meet the desires of its people violates the guarantee of the right to self-determination in Article 1. This right does not depend exclusively on the UN

³²⁷ David Raic, *Statehood and the Law of Self-Determination*, The Hague; New York: Kluwer Law International, 2002, pp 105-106.

³²⁸ Roland Portmann, *Legal Personality in International Law*, Cambridge University Press, 2010, p 94

³²⁹ Connie L. McNeely, *Constructing the Nation-state: International Organization and Prescriptive Action*, Greenwood Publishing Group, 1995, p 38.

³³⁰ UN Charter (1945) Art 4.

³³¹ UN Charter (1945) Art 1.

³³² UN Charter (1945) Art 4.

Charter; many organisations do not accept the rebuilding of countries without attention to the right of political self-determination.³³³ For example, Article 9 of the OAS Charter stipulates that a state that ousts its democratic government will be suspended from membership in the organisation.³³⁴

Moreover, the country that does not fulfil the desires of its people can become subjected to internal disorder which threatens the peace of the state and, if left unresolved, can become a threat to world peace. Such a situation goes contrary to one of the main goals of international law, which is to achieve international peace and security.³³⁵ Therefore, for its part, the state must make a commitment to respect international law and be reconstructed according to the wishes of its people.³³⁶ As stated, international law has become more interested in issues that deal with individuals, their rights and the attendant legal obligations of the state.

At the same time, recognition has acquired power as a source of legal rights and obligation. Customary international law has demanded that, to gain recognition, states must fulfil such rights and obligations by respecting and not resisting the imposition of rules and internal legal safeguards to ensure those rights.³³⁷ Here, there is a clear, positive relationship between international recognition of the state and the state's recognition of its legal rights and obligations. Recognition of the state entails that the state acknowledges the legal obligations which it must carry out and the legal rights which it must not violate.³³⁸

When discussing recognition in international law, it should be pointed out that the Montevideo Convention made the state's ability to enter into international relations with

³³³ John Charvet, Elisa Kaczynska-Nay, *The Liberal Project and Human Rights: The Theory and Practice of a New World Order*, Cambridge University Press, 2008, p. 129.

³³⁴ Charter of the Organization of American States (1948) art 9.

³³⁵ Hans Kelsen, *Collective Security Under International Law*, The Lawbook Exchange, 2001, p. 129.

³³⁶ Brett Bowden, Hilary Charlesworth, Jeremy Matam Farrall, *The Role of International Law in Rebu Allen Buchanan, Justice, Legitimacy, and Self-Determination : Moral Foundations for International Law*, Oxford University Press, 2003, pp. 270-271.

³³⁷ Brett Bowden, Hilary Charlesworth, Jeremy Matam Farrall, *The Role of International Law in Rebuilding Societies after Conflict*, Cambridge University Press, 2009, p 185.

³³⁸ Rice says that the state does not become a state because of the recognition of other countries or international organisations but because of personal legal gains achieved through the practise of the rules and principles of modern laws, including the right to democratic governance. Thus, democratic governance is attained through effective political participation. See David Raic, *Statehood and the Law of Self-Determination*, The Hague ; New York : Kluwer Law International, 2002, pp 165-210.

other countries a standard of statehood.³³⁹ Although this standard acknowledges the theory of self-determination,³⁴⁰ the convention did not expand on this right or create clear explanations of it but, rather, left it to the jurisprudence and opinions of various legal authorities to explain and discuss this standard. Therefore, in the jurisprudence of international law, we find a tremendous variety of views and opinions on the recognition of the state. However, efforts have been made to establish concord among those views through their practical application. Such efforts have been most visible in the international practices and legal norms adopted by modern international organisations established after the Montevideo Convention.

Recognition is not limited to the standard of the state's ability to engage in international relations but is also based on other criteria. First, recognition is tangible evidence that the state has succeeded in fulfilling the established criteria and has dedicated itself to respecting public international law.³⁴¹ For example, acceptance of the state under the UN Charter means that that state has respected international law. This dissertation next addresses the link between recognition and the standard of homogeneity and integration because it is associated with the right of political self-determination, which is the focus of this study.

Traditionally, several legal theories have dealt with the legal dimension of recognition and its role in the emergence of the state on the international level and in the acceptance of state as an integral part of the international community. The most important of these theories are constitutive theory and declaratory theory. These theories have gained remarkable attention from scholars of international law, who have devoted much legal literature to analysing, discussing and debating them.³⁴² Therefore, it is important to consider these theories and analyse the extent of the attention that they pay to the right of political self-determination and their role in the adoption of the standard of homogeneity and integration between the

³³⁹ Montevideo Convention, art 1 <<http://www.cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897>> accessed 28 September 2013.

³⁴⁰ Gerard Kreijen, *State Failure, Sovereignty And Effectiveness: Legal Lessons from the Decolonization of Sub-Saharan Africa*, Martinus Nijhoff Publishers, 2004, pp. 21-22.

³⁴¹ William Thomas Worster, *Law, Politics, and the Conception of the State in State Recognition Theory*, Boston University International Law Journal (2009) Vol. 27, No. 1. See also Barrie Strain, *Palestinian statehood: a political pipedream but a legal reality*, Coventry Law Journal (2002) Vol. 7, No. 2. See also Thomas Grant, *Defining Statehood: The Montevideo Convention and its Discontents*, Columbia Journal of Transnational Law (1999) Vol. 37, No. 2, pp. 403 – 457.

³⁴² David J. Bederman, *The Spirit of International Law*, University of Georgia Press, 2002, pp 129-133. And also see Tanja E. Aalberts, *Constructing Sovereignty Between Politics and Law*, Routledge, 2012, p 160. See also Thomas D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution*, Greenwood Publishing Group, 1999, pp 213-220.

government and the people. This research thereby aims to understand whether the standard of homogeneity and integration is documented in customary international law.

2.5.1 Constitutive theory

This theory traces its roots to the mid-eighteenth century when it was developed by German philosopher G.W.F. Hegel amid the emergence of European nationalism.³⁴³ This theory suggests that recognition is necessary and cannot be waived. Therefore, recognition acquires a legal status because, through it, a state certifies its legal legitimacy.³⁴⁴ There is no doubt that, under this theory, the modern state must gain the recognition of the states that have preceded it in order to gain official statehood.³⁴⁵ Note that this theory does not lay out the legal criteria which must be met by the state but does require that the state be given explicit recognition by other countries.

This theory does not deny the existence of unrecognised states but asserts that their existence is incomplete and that they cannot achieve full legal standing without the acceptance of themselves and their conduct from other countries. Thus, the development of the nascent state lies at the discretion of other countries.³⁴⁶ This theory could lead to the abuse of the new state and its subordination to the dominance of other states which could force it to follow their own political ideas and ideology. Under this theory, the criteria of international law alone are not sufficient to secure the rights and the obligations of the state. Instead, those rights and obligations are granted by the will of other countries, particularly those that have established the rules of public international law and aided in determining the scope of those rules. In the absence of recognition, the new state is regarded as a transitory phenomenon or incident and cannot hold official status in the area of public international law.³⁴⁷

³⁴³ Anthony Carty, *Philosophy of International Law*, Columbia University Press, 2007, p. 225

³⁴⁴ Jure Vidmar, *Explaining the Legal Effects of Recognition*, *International & Comparative Law Quarterly* (2012) Vol. 61, No. 2, pp. 361 – 387.

³⁴⁵ David Raic, *Statehood and the Law of Self-Determination*, The Hague; New York: Kluwer Law International, 2002, p 29.

³⁴⁶ Aleksandar Pavkovic, Peter Radan, *Creating New States: Theory and Practice of Secession*, Ashgate Publishing, 2013, p. 11.

³⁴⁷ Milena Sterio, *The Kosovar declaration of independence: "botching the Balkans" or respecting international law?* *Georgia Journal of International and Comparative Law* (2009) Vol. 37, No. 2.

2.5.2 Declaratory theory

This theory makes the standards of state-building essential to international recognition but does not make explicit legal recognition from other countries itself a standard. Rather, the state becomes subject to public international law when it meets the legal criteria for state-building or rebuilding.³⁴⁸ Thus, the criteria for state-building play a role in the state's acquisition of legal capacity and obligations imposed by international law.³⁴⁹ Note that, in this theory, recognition does not create a state but, rather, examines the state and acknowledges its existence. Accordingly, the will of other countries does not play any role in the granting of the state legal status in order to be a party to public international law. Recognition, therefore, is not a legal but a political action.³⁵⁰

This theory regards recognition as a secondary factor in state-building and suggests that de facto recognition is achieved when the legal standards for the construction of the state are insufficient to grant participation in international forums.³⁵¹ This theory goes on to assert that recognition is a legal action which other countries commit when the nascent state fulfils the new legal criteria settled in international law. Recognition is granted retroactively from the date of establishment of the state, not from the date of the explicit recognition of other countries.³⁵² This means that the state is subject to the provisions of public international law from its inception and, therefore, must adhere to and not break the letter of international law and legal norms from its founding.³⁵³

2.5.3 Differences between constitutive and declaratory theory

Constitutive theory awards existing states supreme legal authority over the new state and, therefore, cannot realise either the principle of equality between nations or the principle of

³⁴⁸ Boleslaw Adam Boczek, *International Law: A Dictionary*, Scarecrow Press, 2005, p. 101.

³⁴⁹ Thomas D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution*, Greenwood Publishing Group, 1999, pp. 5-40.

³⁵⁰ William Thomas, *Law, Politics, and the Conception of the State in State Recognition Theory*, Boston University International Law Journal (2009) Vol. 27, No. 1.

³⁵¹ Roland Portmann, *Legal Personality in International Law*, Cambridge University Press, 2010, p. 250.

³⁵² Timo Hohmuth, *Foundations of Public International Law: Examine critically the requirements for the creation of a state in modern international law*, GRIN Verlag, 2004, pp. 6-7.

³⁵³ Hersch Lauterpacht, *Recognition in International Law*, Cambridge University Press, 2012, pp. 58-65.

sovereignty.³⁵⁴ Article 2 (1) of the UN Charter (establishes maintaining the principle of sovereign equality among member states as a priority in the UN's work.³⁵⁵ As well, Article 1 (2) states that the organisation seeks 'to develop friendly relations among the nations based on respect for the principle of equal rights and self-determination of peoples'.³⁵⁶ Additionally, Article 5 of the Declaration of the Rights and Duties of States, which was passed by the International Law Commission in 1949, stipulates that 'every State has the right to equality in law with every other State'.³⁵⁷ Thus, discriminating among states is unacceptable under international law. A lack of equality among states' obligations will result in legal complications that violate the principle of equal rights and obligations.³⁵⁸ International law does not make any one nation higher than another nation but, rather, grants all peoples equal right to determine their fates in the manner they deem appropriate.³⁵⁹

Declaratory theory does not invent such a complex hierarchy among nations and does not let any people claim superiority over any other people or state. However, one goal of international law is to make the individual the basis of governments. Individuals are given the right to direct the development of the political entity that will govern them, provided that that entity meets the legal criteria settled in international treaties and customary international law.³⁶⁰ Declaratory theory, on the other hand, makes the state more harmonious with the international community when the legal criteria are an expression of the desires of the community. In contrast, constitutive theory can extend legal status countries that are isolated and not widely accepted. For example, the inhabitants and effective governing authority of Northern Cyprus are largely isolated from the world and, consequently, recognised only by Turkey.³⁶¹ Declaratory theory assigns more significance to whether a country enjoys extensive international relations, which is reflected in its citizens' economic and health status

³⁵⁴ Ronald MacDonald, Douglas Johnston, *The structure and process of international law: essays in legal philosophy, doctrine and theory*, Martinus Nijhoff Publishers, 1983, p. 696.

³⁵⁵ UN Charter (1945) art 2.

³⁵⁶ *Ibid.*

³⁵⁷ Declaration of the Rights and Duties of States, UN International Law Commission (1949) article 5
<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CC0QFjAA&url=http%3A%2F%2Flegal.un.org%2Ffilc%2Ftexts%2Finstruments%2Fenglish%2Fdraft%2520articles%2F2_1_1949.pdf&ei=Ij7PUqTvBKHC0QWxzoDACQ&usg=AFQjCNFR03I0j4LuNSTlyDm3bXvHixzyeA> accessed 8 October 2013.

³⁵⁸ Ademola Abass, *Complete International Law*, Oxford University Press, 2012, p 138.

³⁵⁹ Edwin Dickinson, *The Equality of States in International Law*, Biblio Bazaar, 2009, pp. 24- 76.

³⁶⁰ Martti Koskeniemi, *From Apology to Utopia: The Structure of International Legal Argument*, Cambridge University Press, 2005, p. 275.

³⁶¹ Joseph Weiler, *Differentiated Statehood? "Pre-States"?: Palestine@the UN; EJIL and EJIL: Talk!; The Strange Case of Dr. Ivana Radacic; Looking Back at EJIL 2012 - The Stats; Changes in the Masthead - Our Scientific Advisory Board; In this Issue ,European journal of international law (2013) Vol. 24, No. 1 , pp. 1-11.*

and in the security of state. More importantly, such a state has an international obligation to refrain from breaking the rules of international law and to respect those same rules.³⁶²

Some argue that declaratory theory supports the violation of international law in situations when the state emerges through the use of force or the occupation of the territory of another state because such a state can be recognised based on the consensus and acceptance of the international community.³⁶³ However, it is unreasonable that existing states would accept the emergence of a country established through military force because states always seek the achievement of peace and international security.³⁶⁴ The answer to this criticism, in brief, is that declaratory theory does not depart from this framework because it does not grant recognition to a state that has not met the criteria of international treaties and customary international law, such as respect for and acceptance of international law.³⁶⁵

This rebuttal is confirmed by the process by which all states gain recognition through the UN Charter, in which Article 4 (1) expressly provides that UN membership is open to all countries that 'are able and willing to carry out these obligations'.³⁶⁶ Moreover, the obligation to submit to international law is not enshrined only in the UN Charter. Most states now also seek to join regional organisations whose members must abide by the legal rules issued by the organisation in order to remain members.³⁶⁷

Another critique can be advanced from the fact that all new countries emerge through separation from the mother state.³⁶⁸ The new state thus requires the approval of the parent state, which means that constitutive theory is compatible with this situation. Evidence cited in support of this argument is that Eritrea seceded from the mother state of Ethiopia with its consent,³⁶⁹ Singapore from Malaysia with its consent,³⁷⁰ and South Sudan from Sudan with its consent.³⁷¹

³⁶² Alina Kaczorowska, *Public International Law*, Routledge, 2010, pp. 222-223.

³⁶³ William Thomas Worster, *Law, Politics, and the Conception of the State in State Recognition Theory*, Boston University International Law Journal (2009) Vol. 27, No. 1.

³⁶⁴ Kristina Roepstorff, *The Politics of Self-determination: Beyond the Decolonisation Process*, Routledge, 2012, pp. 113-114.

³⁶⁵ Hersch Lauterpacht, *Recognition in International Law*, Cambridge University Press, 2012, pp. 34

³⁶⁶ UN Charter (1945) art 4.

³⁶⁷ Boleslaw Adam Boczek, *International Law: A Dictionary*, Scarecrow Press, 2005, p. 72.

³⁶⁸ Duncan French, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge University Press, 2013, p. 73.

³⁶⁹ David Raic, *Statehood and the Law of Self-Determination*, Kluwer Law International, 2002, p 333.

However, a fundamental question comes to mind: Were these new states able to achieve the legal standards for state-building? Certainly, when considering the measures which governed the separation of the states, we find that these acts of secession did meet those standards.³⁷² These separations of states occurred under international supervision, and the new states were able to join the UN or regional organisations; Eritrea became a member of the AU, and South Sudan of the AU and the UN.³⁷³ Therefore, these emerging states demonstrated their commitment to international legal rules, in addition to the criteria of the Montevideo Convention. More importantly, these separations acknowledged the right of self-determination and occurred after free and fair elections held under international supervision.³⁷⁴

If we assume that the consent of the mother state is a condition for statehood, thus assigning more credence to constitutive theory, we hold a position that is incompatible with the right of self-determination.³⁷⁵ This is because the right of self-determination arises from the aspirations of the people and it is the legal form of the special demands of a particular category within a particular region of the state, or the legal form of the demands of all the citizens in all regions within the state.³⁷⁶ Moreover, this condition leads to an armed conflict, because if the people insist that their right of self-determination will not bow to the condition applied under that concept, they will decide to pursue self-determination in their region, and they would become a source of authority in that region or that state, thereby potentially

³⁷⁰ Ibid, p. 314.

³⁷¹ Milena Sterio, *The Right to Self-determination Under International Law: "selfistans", Secession and the Rule of the Great Powers*, Routledge, 2013, p. 47.

³⁷² James Summers, *Kosovo: A Precedent?: The Declaration of Independence, the Advisory Opinion and Implications for Statehood, Self-Determination and Minority Rights*, Martinus Nijhoff Publishers, 2011, pp 265-266.

³⁷³ Marcelo G. Kohen, *secession: International Law Perspectives*, Cambridge University Press, 2006, p. 28. Also see African union, *State members*, available at (<http://www.au.int/en/content/state-eritrea>) accessed 14/07/2014. Also see African union news, *African Union Welcomes South Sudan as the 54th Member State of the Union*, 27/07/2011, available at (<http://www.au.int/en/content/african-union-welcomes-south-sudan-54th-member-state-union>) accessed 14/07/2014. Also see UN news center, *UN welcomes South Sudan as 193rd Member State*, 14 July 2011, available at (<http://www.un.org/apps/news/story.asp?NewsID=39034#U8P0IvldVjQ>) accessed 14/07/2014.

³⁷⁴ Aleksandar Pavkovic, Peter Radan, *The Ashgate Research Companion to Secession*, shgate Publishing, 2011, pp. 498-499. Also see *International law and the self-determination of South Sudan*, African Institute for Security Studies (2012) No. 231

³⁷⁵ Jure Vidmar, *Explaining the Legal Effects of Recognition*, *International & Comparative Law Quarterly* (2012) Vol. 61, No. 2, pp. 361– 387.

³⁷⁶ James Summers, *The Rhetoric and Practice of Self-Determination: A Right of All Peoples or Political Institution*, *Nordic Journal of International Law* (2004) Vol. 73, No. 3, pp. 323-361.

becoming a threat to international peace and security. The cases of South Sudan and Eritrea illustrate this very issue, where the mother state consented after bloody conflicts and popular uprisings. The people of South Sudan fought a long war that devastated the region and its inhabitants. Then Sudan allowed elections, enabling the public to vote on southern Sudan's sovereignty.³⁷⁷ In Eritrea, the popular uprising started in 1961 but did not achieve self-determination until the 1993 elections.³⁷⁸

Kosovo is a similar case because UN Security Council Resolution 1244 (1999) bestowed the people of Kosovo autonomy³⁷⁹ after a fierce war was waged by the people of Kosovo to secede from the Federal Republic of Yugoslavia.³⁸⁰ This decision aimed to grant the aspirations of the people of Kosovo to establish an independent entity through the autonomy and ensure security, peace and respect for their human rights.³⁸¹ However, the Federal Republic of Yugoslavia did not support the separation of Kosovo as an independent state, and only granted Kosovo autonomy.³⁸² Despite the lack of approval by its mother state, Kosovo declared full independence in 2008. Kosovo is not an official member of the UN.³⁸³ Nevertheless, more than 100 countries recognise the Republic of Kosovo as an independent state,³⁸⁴ and Kosovo is also a member of the International Monetary Fund.³⁸⁵

Here, we can say that declaratory theory regards recognition as a political action which is crystallised in state practices and the state's dedication to the rules of international law. In contrast, constitutive theory does not accept this definition of recognition and considers it to be a solely legal concept that cannot be waived in accepting the state as a party to

³⁷⁷ Aleksandar Pavkovic, Peter Radan, *The Ashgate Research Companion to Secession*, shgate Publishing, 2011, p 506.

³⁷⁸ David Raic, *Statehood and the Law of Self-determination*, Martinus Nijhoff Publishers, 2002, p. 196; p. 315. Also see *International law and the self-determination of South Sudan*, African Institute for Security Studies (2012) No. 231.

³⁷⁹ UN, Security Council, Resolution No. 1244 (June 1999).

³⁸⁰ Philip Hadji, *The Case for Kurdish Statehood in Iraq*, *Case Western Reserve Journal of International Law* (2009) Vol. 41, No 2-3, p. 513.

³⁸¹ Robert Muharremi, *Kosovo's Declaration of Independence: Self-Determination and Sovereignty Revisited*, *Review of Central and East European Law* (2008) Vol. 33, No. 4.

³⁸² Jure Vidmar, *International Legal Responses to Kosovo's Declaration of Independence*, *Vanderbilt Journal of Transnational Law* (2009) Vol. 42, No. 3.

³⁸³ Milena Sterio, *The Kosovar Declaration of Independence: "Botching the Balkans" or Respecting International Law?* *Georgia Journal of International and Comparative Law* (2009) Vol. 37, No. 2.

³⁸⁴ Ministry of Foreign Affairs of the Republic of Kosovo, *Countries that have recognized the Republic of Kosovo*, available at (<http://www.mfa-ks.net/?page=2,33>) accessed 19/08/ 2014.

³⁸⁵ James Summers, *Kosovo: A Precedent? The Declaration of Independence, the Advisory Opinion and Implications for Statehood, Self-Determination and Minority Rights*, Martinus Nijhoff Publishers, 2011, p. 134.

international law.³⁸⁶ This difference does not mean that declaratory theory does not take into consideration the legal dimension of recognition but, rather, that declaratory theory blends recognition with the legal standards of statehood and regards recognition as the duty of other countries once the new state has achieved those standards. Therefore, other countries are obliged to recognise the new state if it has acquired the complete elements of a state or achieved the required standards.³⁸⁷

This measure ensures that the construction of the state and recognition of it are not subject to the views of individual countries.³⁸⁸ However, one might object that the legal criteria for the construction or rebuilding of the state are difficult to determine because of the lack of legal texts on the topic in international law since the era of the Montevideo Convention. Even if we accept these criteria, what is the legal guarantee that any given state has fulfilled these standards? At this question, declaratory theory faces a real dilemma in regards to constitutive theory. Although this issue presents great complexity, these criteria can be achieved through legal actions, that is, the state's obligation to respect international law. If the state carries out this obligation, it will appear consistent with the rules of public international law.³⁸⁹ Such commitment is demonstrated when the state may join the UN or other regional organisations.³⁹⁰ The legal rules contained in the charters of the UN and other organisations express the spirit of international law, and therefore, these criteria are in line with international law and its goals, although they are not necessarily specifically the same. Thus, those standards are fused with international law, and there cannot be criteria contrary to the essence of international law.

A number of diverse standards in customary international law and international conventions have remained stable since the Montevideo Convention.³⁹¹ For example, the state must accept the rules of international law, must not be built on occupied territory and must maintain unity between the government and the citizenry. These standards are fused with the written legal

³⁸⁶ Robert Delahunty, *Statehood and the Third Geneva Convention*. (The Laws of War: Past, Present, and Future) *Virginia Journal of International Law* (2005) Vol. 46, No. 1.

³⁸⁷ Ersun Kurtulus, *State Sovereignty: Concept, Phenomenon and Ramifications*, Palgrave Macmillan, 2005, pp. 102-103.

³⁸⁸ Boleslaw Adam Boczek, *International Law: A Dictionary*, Scarecrow Press, 2005, p. 101.

³⁸⁹ William Slomanson, *Fundamental Perspectives on International Law*, Cengage Learning, 2010, pp. 59-61.

³⁹⁰ Mats Berdal, Spyros Economides, *United Nations Interventionism, 1991-2004*, Cambridge University Press, 2007, p. 95.

³⁹¹ David Raic, *Statehood and the Law of Self-Determination*, The Hague; New York: Kluwer Law International, 2002, p 333. Also see David Bederman, *The Spirit of International Law*, University of Georgia Press, 2006, p. 82.

rules of international organisations.³⁹² For example, Article 4 of the UN Charter holds that member states must accept all the obligations contained in the Charter.³⁹³ As well, Article 49 of the Treaty on the European Union (TEU) states that all European countries have the right to join the EU, provided that they respect the principles of democracy, human rights, other fundamental freedoms and the rule of law.³⁹⁴ The Copenhagen criteria further add the important standard that the state must be able to fulfil the obligations set forth in EU law.³⁹⁵ In addition, Article 6 of the OAS Charter requires that a country wishing to join the organisation must declare its willingness to abide by all rules established by the organisation.³⁹⁶

One can observe the practical effect of these criteria in the case of Southern Rhodesia, which involved the important legal argument that the government could not meet the criteria settled in international law that the state prevent racism. The UN made this argument when it chose not to invite the state to join the UN and, instead, issued 14 resolutions refusing to recognise the government of Southern Rhodesia. For example, UN General Assembly resolutions Nos. 1747 (1961)³⁹⁷ and 3115 (1973)³⁹⁸ and UN Security Council Resolutions Nos. 253 (1968)³⁹⁹ and 288 (1970)⁴⁰⁰ declare that these bodies will not recognise the government of Southern Rhodesia due to its racism. The UN's decision not to accept this state extended to imposing economic and military sanctions and inviting other nations to refuse to cooperate and have economic dealings with the apartheid government in Southern Rhodesia.

This denial of international recognition meant that the declaration establishing the country of Southern Rhodesia in 1961 did not meet one of the legal criteria, and therefore, recognition of

³⁹² Duncan French, *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge University Press, 2013, pp 62-63. See also Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession With Formulations of Post-Colonial National Identity*, Martinus Nijhoff Publishers, 2000, p. 77.

³⁹³ UN Charter (1945) art 4.

³⁹⁴ The Treaty on the European Union (TEU) (1992) art 49.

³⁹⁵ European Commission, 'Conditions for Membership' (European Commission) <http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm> accessed 05 October 2013.

³⁹⁶ OAS Charter of the Organization of American States (1948) art 6 <http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm>.

³⁹⁷ UN, General Assembly, Resolution No. 1747 (November 1961).

³⁹⁸ UN, General Assembly, Resolution No. 3115 (December 1973).

³⁹⁹ UN, Security Council, Resolution No. 253 (May 1968).

⁴⁰⁰ UN, Security Council, Resolution No. 288 (November 1970).

this state was incomplete.⁴⁰¹ This situation was consistent with Article 41 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, which stipulates that ‘no State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation’.⁴⁰² This legal text mandates that a state which exhibits systematic failure to fulfil international legal obligations should not be acknowledged as legal.

Thus, the declaratory theory can be integrated into the development of international law because as noted, declaratory theory does not specify certain criteria but leaves them open to international law to determine through written rules or international practices. Accordingly, this theory does not limit states or international law to certain specific criteria but, rather, allows human thought to deal the issues raised in state-building and rebuilding through the practices of states and international organisations. Declaratory theory’s compatibility with international law is confirmed by the fusion of these practises in legal rules, whether written or customary. This formalisation of declaratory theory reinforces the trend among scholars of international law to defend this theory and to consider it an acceptable form of legal recognition.⁴⁰³ Ultimately, declaratory theory gains a significant advantage from its compatibility with international legal discourse that promotes the rule of law and seeks to achieve international peace and security and to secure human rights.⁴⁰⁴

2.6 Recognition and the standard of homogeneity and integration

The previous analysis and discussion of the criteria for state-building found declaratory theory to be an acceptable form of international recognition. Is it possible to argue that the standard of homogeneity and integration is important and cannot be waived in state-building and rebuilding? Is this criterion absolute, unable to be denied at any time? If so, the state

⁴⁰¹ Vera Gowlland-Debbas, *Collective Responses to Illegal Acts in International Law: United Nations Action in the Question of Southern Rhodesia*, Martinus Nijhoff Publishers, 1990, p. 206 . Also see David Raic, *Statehood and the Law of Self-Determination*, Kluwer Law International, 2002, pp. 130-131. See also Alina Kaczorowska, *Public International Law*, Routledge, 2010, pp 235-236. Also see Gerard Kreijen, *State Failure, Sovereignty And Effectiveness: Legal Lessons from the Decolonization of Sub-Saharan Africa*, Martinus Nijhoff Publishers, 2004, pp. 24-25.

⁴⁰² Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001) article 41
<<http://legal.un.org/avl/ha/rsiwa/rsiwa.html>> accessed 28 October 2013.

⁴⁰³ Jure Vidmar, *Explaining the Legal Effects of Recognition*, *International & Comparative Law Quarterly* (2012) Vol. 61, No. 2, pp. 361 – 387.

⁴⁰⁴ Milena Sterio, *The Kosovo declaration of independence: "botching the Balkans" or respecting international law?* *Georgia Journal of International and Comparative Law* (2009) Vol. 37, No. 2 .

cannot receive international recognition as an active player and party to international law if it fails to achieve the standard of homogeneity and integration. Thus linked to recognition, the standard of homogeneity and integration standard is an important criteria in contemporary international law for state-building and rebuilding.

On the international level, practices achieve importance and become customary legal rules through repetition.⁴⁰⁵ Examining the standard of homogeneity and integration in international law reveals a number of issues in which the UN (has dealt with it, frequently and repeatedly not accepting the imposition of government force on citizens. In the case of Southern Rhodesia, the UN issued resolutions, such as Resolution No. 288 (1970)⁴⁰⁶ which called for the non-recognition of the new government in Southern Rhodesia. As well, UN General Assembly Resolution No. 2946 (1972)⁴⁰⁷ urged all UN member states to refrain from any action which might confer a kind of legitimacy to the apartheid government in Rhodesia.

Questions then arise: Why did the UN issue these decisions, and what was its motivation? Certainly, the answer to these questions is the lack of consensus between the people and the government; the people of Southern Rhodesia did not accept the racist government which was administering the country.⁴⁰⁸ The same issue emerged in the case of South Africa when the UN and the international community did not accept that country's government because it did not reflect the desires of the people, and no consensus or homogeneity existed between the people and the government.⁴⁰⁹ The UN went beyond the actions in taken in regards to Southern Rhodesia and directly intervened in the internal affairs of South Africa through Resolution No. 554 (1985),⁴¹⁰ which declared the new constitution of South Africa null and void because it did not represent popular, national consensus.⁴¹¹ As well, UN General Assembly Resolution (A/RES/S_16/1), passed on 14 December 1989,⁴¹² called for the South African government to set up an integrated democratic government which would consult the

⁴⁰⁵ Christopher Joyner, *International Law in the 21st Century: Rules for Global Governance*, Rowman & Littlefield, 2005, p. 12.

⁴⁰⁶ UN, Security Council, Resolution No. 288 (November 1970).

⁴⁰⁷ UN, General Assembly, Resolution No. 2946 (December 1972).

⁴⁰⁸ Christian Hillgruber, *The Admission of New States to the International Community*, *European Journal of International Law* (1998) Vol. 9, pp. 491-509.

⁴⁰⁹ Van Der Vyver, *Statehood in international law*, *Emory International Law Review* (1991) Volume 5, Issue 1.

⁴¹⁰ UN, Security Council, Resolution No. 554 (June 1968).

⁴¹¹ Ibid.

⁴¹² UNGA Res A/RES/S-16/1 (December 1988) <<http://www.un.org/documents/ga/res/spec/aress16-1.htm>> accessed 10 October 2013.

wishes of all citizens and serve the will of the people.⁴¹³ In 1994, the UN Security Council issued Resolution No. 919 which expressed the council's satisfaction at the outcome of democratic elections in South Africa.⁴¹⁴

These cases demonstrate that international law does not accept governments that do not comply with the will of their people, especially if these governments are repressive or racist.⁴¹⁵ This stance in international law highlights the role of the standard of homogeneity and integration and its impact on the legal recognition of the state and its legitimacy. Recognition does not depend solely on the traditional criteria in public international law for state-building and rebuilding. Instead, the people must have a role in decision-making and the selection of the appropriate form for the management of their country. The people's ability to play a role in state-building is crucial in the fulfilment of these standards.⁴¹⁶ This standard's importance is evident in the policies of the European Council and its remarkable interest in the people's exercise of their rights and safeguards to prevent a particular group or party imposing from a trusteeship on a political entity.⁴¹⁷ On 16 December 1991, the (EU) unanimously adopted the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union.⁴¹⁸ These principles display a deep concern for the standard of homogeneity and integration for state-building and rebuilding.

The preface to this document clearly establishes as its first principle respect for the right of self-determination of peoples. The primacy of this principle is also enshrined in the Helsinki Final Act⁴¹⁹ and the Charter of Paris,⁴²⁰ especially with regard to the rule of law and democracy and human rights. These principles were made legal requirements for states

⁴¹³ Ibid.

⁴¹⁴ UN, Security Council, Resolution No. 919 (May 1994).

⁴¹⁵ Seth Jones, James Dobbins, The UN's Record in Nation Building, Chicago Journal of International Law (2006) Vol. 6, No. 2.

⁴¹⁶ Jorri Duursma, Fragmentation and the International Relations of Micro-states: Self-determination and Statehood, Cambridge University Press, 1996, p 416. Also see Christian Hillgruber, The Admission of New States to the International Community, European Journal of International Law (1998) Vol. 9, No. 3, pp. 491 – 509.

⁴¹⁷ Ondrej Hamulak, The Essence of European Union's 'Statehood' after Treaty of Lisbon and Lisbon Judgements, UACES Conference, University of Bath, 2010. Also see Richard Caplan, Europe and the Recognition of New States in Yugoslavia, Cambridge University Press, 2005, p. 93.

⁴¹⁸ European Union, 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' (1991) <<http://207.57.19.226/journal/Vol4/No1/art6.html>> accessed 18 October 2013.

⁴¹⁹ Conference on Security and Co-operation in Europe, 'Helsinki Final Act 1975' <<http://www.osce.org/mc/39501?download=true>> accessed 14 October 2013.

⁴²⁰ Paris Charter for a New Europe 1990 <<http://www.osce.org/mc/39516>> accessed 14 October 2013.

emerging from the collapse of former entities to gain recognition. Respect for the right of self-determination encodes the standard of homogeneity and integration in two legal forms.

1. References to previous agreements which provided for securing human rights, particularly those concerning the right of self-determination. For example, the eighth principle of the Helsinki Convention holds that all peoples' right to self-determination must be respected and that all peoples have the right to complete freedom to select the basic features of the government which will run their country and to participate in making domestic and foreign policy.
2. The development of democracy as a means to ensure consensus between the government and the people. Whether a country is democratic serves as concrete, substantial evidence that the government is compatible and in harmony with the people and not imposed on them.

Accordingly, the EU realises the concept of homogeneity and integration through two elements: democracy and the people's right to administer their state internally and externally according to their own aspirations.⁴²¹ The EU implemented this approach when Kosovo announced that it would secede from the Republic of Serbia. In this case, the European Parliament announced on 30 May 2008 that it would welcome the state of Kosovo as a legitimate party in the EU and then hoisted the Kosovo flag in the corridors of the European Parliament.⁴²² There is no doubt that Kosovo fulfilled its obligations under the laws of the EU, particularly to ensure human rights, democracy and respect for diverse races and religions.⁴²³ Significantly, the nationhood of Kosovo was the result of the supervision by the UN, which helped make Kosovo a country friendly to human rights and thus aided it in achieving the standards of state-building required for recognition from the European Parliament.⁴²⁴ In addition, the advisory opinion of the ICJ No. A/RES/63/3 stated that the secession of Kosovo did not violate general international law.⁴²⁵

⁴²¹ Gregory Fox, Brad Roth, *Democratic Governance and International Law*, Cambridge University Press, 2000, p. 9.

⁴²² Tanjug, 'European Parliament Flies 'Independent Kosovo' Flag' (b92 28 May 2008) <http://www.b92.net/eng/news/politics.php?yyyy=2008&mm=05&dd=28&nav_id=50596> accessed 21 October 2013.

⁴²³ Timothy George McLellan, *Kosovo, Abkhazia and the Consequences of state recognition*, Cambridge Student Law Review (2009) Vol. 5, No. 1.

⁴²⁴ Heike Krieger, *The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999*, Cambridge University Press, 2001, p.457.

⁴²⁵ *Accordance With International Law Of The Unilateral Declaration Of Independence In Respect Of Kosovo* (Advisory Opinion) 2010 <<http://www.ICJ-cij.org/docket/files/141/14799.pdf>> accessed 22 October 2013.

Similarly, Kyle Woods showed that the legal structure of Kosovo was built on the model of popular consensus and gave full legal freedoms to all the people in the country. The manner of running the country represented a compromise among different peoples, as evident in the Constitution of Kosovo which, Woods noted, explicitly accepts all international human rights standards. Thus, the Constitution of Kosovo was harmonious with public international law.⁴²⁶ As well, Robert Muharremi argued, the recognition of Kosovo depended upon the existence of a government that represented all people, was effective and was in line with contemporary international law.⁴²⁷ We note that neither Kyle Woods nor Robert Muharremi claim that Kosovo is a fully independent state. However, they do analyse the development of legal institutions in Kosovo, which are subject to supervision by the UN, to confirm the recognition of Kosovo's independence in some countries, particularly certain EU countries, in line with the spirit of contemporary international law and in consideration of the presence of a consensus government approved by all groups of people.

If the international community accepts dictatorships but does not accept popular revolutions that exercise the right of political self-determination, then the standard of homogeneity and integration will not have legal status. However, if the international community does not accept repressive governments but supports popular revolts against such governments and reinforces the value of the right of political self-determination, then the standard of integration and homogeneity will be an essential criterion that cannot be waived.⁴²⁸

Given the evidence, one can say that the standard of homogeneity and integration is compatible with both contemporary legal thinking and practices in international law that deny acceptance to repressive and dictatorial governments, especially during the construction of

⁴²⁶ Kyle Woods, *Religious Freedom in Kosovo: Prenatal Care to a New Nation*, Brigham Young University Law Review (2008) Vol. 28, No. 3.

⁴²⁷ Robert Muharremi, *Kosovo's Declaration of Independence: Self-Determination and Sovereignty Revisited*, Review of Central and East European Law (2008) Vol. 33, No. 4.

⁴²⁸ The achievement of integration and homogeneity between the state and the people provides concrete evidence that the citizens have accepted the government and that appropriate political and legal methodologies are used in the management of the state. The lack of such evidence leads to a political struggle against the government to defend individual rights. This type of struggle inevitably results in violations of international law, especially if the struggle threatens international peace and security or takes on the elements of international crimes against humanity. In the Syrian matter, the crisis started as a peaceful revolution in the city of Daraa and evolved into an armed defence of the people from the government's exercise of oppressive power against those peaceful means.

the state.⁴²⁹ For that reason, the standard of homogeneity and integration has a role and a strong impact on the recognition of the new or rebuilt state.⁴³⁰ Moreover, contemporary international law does not accept the demise of a government which came to power through democratic means and reflects a consensus and homogeneity with the people. Article 30 of the Constitutive Act of the AU denies membership to states in which the government chosen by the country's people is toppled.⁴³¹ Article 9 of the OAS charter takes a similar approach.⁴³²

It is true that democracy is the most effective and tangible evidence of fulfilment of the standard of homogeneity and integration. However, as mentioned, the constitutions of many countries might state that the system of government is democratic, but the government is not, in reality, democratic. Thus, true homogeneity and integration can also be demonstrated through constants outside the legal rules of democracy. For example, the constitution could contain legal rules which provide for public freedoms and freedom of belief. As the state is subjected to the control and supervision of international organisations in order to gain recognition, it must comply with demands to respect human rights and accept supervision to ensure safe, democratic elections.

This analysis highlights the strong influence of democracy on the effective model for statehood in international law, in the sense that the state must be consistent with the direction of current international law. In Chapter 1, the study of the right of self-determination led to the review of democracy literature and the conclusion that democracy realises the right of political self-determination.⁴³³ Thus, the existence of democracy stands as clear evidence that a state has met the standard of homogeneity and compatibility between the people and the government, which is one of the most important criteria in state-building and rebuilding.

⁴²⁹ Dan Stigall, Comparative law and state-building: the "organic minimalist" approach to legal reconstruction, *Loyola of Los Angeles International & Comparative Law Review* (2007) Vol. 29, No. 1.

⁴³⁰ David Galbreath, Dealing with diversity in international law: Self-determination and statehood, *The International Journal of Human Rights* (2005) Vol. 9, No. 4, pp. 539 – 550.

⁴³¹ AU Constitutive Act, art 30 <http://www.au.int/en/about/constitutive_act> accessed 29 October 2013.

⁴³² OAS Charter art 9

<http://www.oas.org/dil/treaties_A-41_Charter_of_the_Organization_of_American_States.htm> accessed 29 October 2013.

⁴³³ Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice*, Hart Publishing Limited, 2013, pp. 36-90.

2.7 Democracy and Statehood

If democracy effectively is the materialisation of the right to political self-determination, it must exercise a strong influence on the standards of state-building and rebuilding, especially the criterion for homogeneity and integration of the people and the government.⁴³⁴ Whether such a consensus exists between the people and the government can be seen in whether the government was formed through democratic means and with the consent of the people.⁴³⁵ Consequently, democracy is a mirror that reflects the achievement of this standard in actual interactions, not mere formalities. Many countries have adopted a democratic approach in their constitution but are subjected to the rule of dictators who do not accept defeat in elections. For example, the Baath Party has governed Syria since 1963 and accepts neither defeat in any election nor grants the Syrian people's right to participate in decision-making.⁴³⁶ Since 1963, presidential elections in Syria have not seen Hafez Assad or his son Bashar al-Assad win by less than 97%.⁴³⁷

Therefore, democracy must be a reality and not a formality in order to claim that there is real interaction between the people and the government. For example, consider the popular uprising in Syria against a repressive regime to demand the right of political self-determination.⁴³⁸ This argument does not depend on the example of Syria alone; many repressive countries such as North Korea, Sudan and Cuba boast formal democratic principles.⁴³⁹ Therefore, the criteria for state-building must be realised in all aspects of a state in order to guarantee the achievement of a just peace and international security because unity between the people and the government ensures regional peace and security, which

⁴³⁴ Margaret Moore, *National Self-determination and Secession*, Oxford University Press, 1998, p. 10

⁴³⁵ Peter Kraus, *A Union of Diversity*, Cambridge University Press, 2008, p.30. See also Seth Jones, James Dobbins, *The UN's Record in Nation Building*, *Chicago Journal of International Law* (2006) Vol. 6, No. 2, pp. 703-723. See also Ondrej Hamulak, *The Essence of European Union's 'Statehood' after Treaty of Lisbon and Lisbon Judgements*, UACES Conference, University of Bath, 2010.

⁴³⁶ Stephan Rosiny, *Power Sharing in Syria: Lessons from Lebanon's Taif Experience*, *Middle East Policy* (2013) Vol. 20, No. 3, pp. 41-55.

⁴³⁷ Mike Giglio, 'Amid Syria's Chaos, Assad Plans A Presidential Vote For Next Year' (BuzzFeed News 23 October 2013) <<http://www.buzzfeed.com/mikegiglio/amid-syrias-chaos-assad-plans-a-presidential-vote-for-next-y>> accessed 29 October 2013. See also British Broadcasting Corporation News, 'Syria's Assad Wins Another Term' (BBC 29 May 2007), <http://news.bbc.co.uk/1/hi/world/middle_east/6700021.stm> accessed 29 October 2013.

⁴³⁸ Carlo Panara, Gary Wilson, *The Arab Spring: New Patterns for Democracy and International Law*, Martinus Nijhoff Publishers, 2013, pp. 101-103. Also see Rowena Maguire, Bridget Lewis, Charles Sampford, *Shifting Global Powers and International Law: Challenges and Opportunities*, Routledge, 2013, pp. 90-94.

⁴³⁹ Kirsten Bookmiller, *The United Nations*, Infobase Publishing, 2008, p. 101.

contributes to the international peace. When considering the many cases of territories separating from the mother state, we find that the real criterion for the legitimacy of secession after the mother state grants its approval is overwhelming public support, demonstrated through a referendum. This occurred in 2011 when South Sudan seceded from Sudan through democratic means.⁴⁴⁰

There is growing popular demand for democracy, and international codes have made it a human right and protected the pursuit of it,⁴⁴¹ as explained in the first chapter. Most importantly, democracy has become a basic foundation for building a modern state under current international regulations. Democracy's core status is illustrated by its inclusion as a guiding principle for the basic requirements for the acceptance of a state in the EU.⁴⁴² This demonstrates that democracy has become a key support to a state gaining acceptance from its surrounding community.⁴⁴³ Thus, the question arises: Does democracy stand as a separate, independent standard, or is it merely a means to achieve the criterion of homogeneity and consensus between the government and the people?

To answer this question, we first observe that both propositions require access to good governance, which ensures agreement with modern legal discourse, peaceful coexistence among nations and respect for human rights and social justice.⁴⁴⁴ On the practical level, democracy is a means to realise these goals and to accomplish the integration and unity of the government and the people. On the moral level, the standard of homogeneity and consensus serves as a concrete measure of whether this discourse has been materialised through full respect for human beings and their civil and political rights. As well, this standard demonstrates good governance, that the people accept their government and that the government has not imposed its authority by force but, rather, acquired it from popular will.⁴⁴⁵

⁴⁴⁰ Gideon Boas, *Public International Law: Contemporary Principles and Perspectives*, Edward Elgar Publishing, 2012, p 202.

⁴⁴¹ Sienho Yee, *Towards an International Law of Co-Progressiveness*, Martinus Nijhoff Publishers, 2004, p. 25

⁴⁴² Christian Hillgruber, *The Admission of New States to the International Community*, *European Journal of International Law* (1998) Vol. 9, No. 3, pp. 491 – 509.

⁴⁴³ Gregory Fox, Brad Roth, *Democratic Governance and International Law*, Cambridge University Press, 2000, pp. 532-565.

⁴⁴⁴ Roland Axtmann, *Democracy: Problems and Perspectives*, Edinburgh University Press, 2007, p. 94

⁴⁴⁵ David Galbreatha, *Dealing with diversity in international law: Self-determination and statehood*, *The International Journal of Human Rights* (2005) Vol. 9, No. 4, pp. 539 – 550.

Thus, homogeneity and consensus between the people and the government stand as an independent standard essential for nation-building and the reconstruction of the state and democracy as a supplementary standard or practical means to ensure that the primary standard has been achieved. We can say that the existence of homogeneity and integration guarantees that democracy has been achieved in actuality and not as a formality or in theory, as in a repressive state or dictatorship such as Syria or North Korea which has the appearance of democracy.

This argument is advanced not to underestimate the role of democracy but, to the contrary, to show that democracy ensures the full realisation of the standard of homogeneity and consensus. Therefore, democracy cannot be dispensed with during the stage of building a modern state, and many peoples rebuild their states according to the democratic model in order to fulfil the criterion of homogeneity and compatibility.⁴⁴⁶ Democracy achieves significance and importance through its role in the acceptance and recognition of the state by other countries and international organisations and serves as tangible evidence verifying the accomplishment of this criterion.⁴⁴⁷

2.8 Conclusion

In the effort of peoples to secure the legitimacy of their state and their rights, the principles and legal concepts in international law that deal with the statehood have not constrained or acted as a stumbling stone to the right of political self-determination. To the contrary, the right of political self-determination has had a clear impact on the standards in international law for state-building and recognition of the state, whether it is an emerging country or an existing country that has undergone internal changes.

This influence is evidenced by the emergence of the standard of homogeneity between the people and the government, which in international practice has proven to have a strong effect on whether states gain international recognition. We can state with confidence that it is

⁴⁴⁶ Derick Brinkerhoff, *Governance in Post-Conflict Societies: Rebuilding Fragile States*, Routledge, 2007, p.96. Also see Gregory Fox, Brad Roth, *Democratic Governance and International Law*, Cambridge University Press, 2000, p 5. See also Steven Wheatley, *Democracy, Minorities and International Law*, Cambridge University Press, 2005, p. 128.

⁴⁴⁷ Jure Vidmar, *Democratic Statehood in International Law: The Emergence of New States in Post-Cold War Practice*, Hart Publishing Limited, 2013, pp. 8-42.

among the newly established standards at the core of international law. Thus, there is substantial convergence between the right of self-determination and the international legal principles that deal with state-building and rebuilding.

Certainly, democracy is an acceptable means to ensure the implementation of the right of political self-determination. However, the standard of homogeneity and integration is tangible evidence of the realisation of this right, because it ensures that the government was not imposed on the people by force and governs the country in accordance with the aspirations and desires of the people. Consequently, democracy and the standard of homogeneity and integration complement one another in the creation of a rational government that respects human rights and achieves the highest degree of social justice, as is consistent with the international legal discourse.

After a comprehensive study of the emergence of the right of political self-determination in modern international law, we conclude that this right did not emerge from the legal principles which produced the international laws concerning the concept of statehood but, rather, the right itself contributed to the development of new concepts and criteria for international recognition and statehood. In the next section of this dissertation, we examine international interventions to support and promote the right of political self-determination in order to study its impact on the legal development of the modern concepts of sovereignty and non-interference.

Chapter Three

The legal aspects of international intervention and the principle of non-interference in international law

3.1 Introduction

The previous chapters reviewed international law on the right of political self-determination and showed that popular demand for this right can give rise to conflicts with dictatorial governments which seek to prevent its exercise. Such governments often commit crimes against humanity and violate human rights in order to deny peoples the right to political self-determination. Such situations prompt international interventions to protect against such violations and aid in the assertion of this right. Intervention to support the right of political self-determination is considered one of the most important themes in contemporary international law and deserves comprehensive study to identify its components and consider its merits. Such an effort has been necessitated by repeated, recent international actions taken in support of this right and by attention to human rights. There have been many cases of international interventions to support the right of political self-determination and to promote democratic ideals, which stand as the contemporary, rational model for political governance.⁴⁴⁸ These cases include, for example, UN Security Council Resolution No. 940 (1994), private efforts made in support of democracy in Haiti,⁴⁴⁹ the 1989 United States intervention in Panama⁴⁵⁰ and the 2011 international intervention in Libya.⁴⁵¹

However, intervention to support the right of political self-determination gives rise to numerous thorny issues, and in many cases, interventions have diverged from the principles of this practice. Before examining international interventions to promote or support this particular right, we first need to examine the general concept of intervention in international

⁴⁴⁸ Simon Chesterman, *Just War Or Just Peace?: Humanitarian Intervention and International Law*, Oxford University Press, 2002, pp 88-89 .

⁴⁴⁹ UN, Security Council, Resolution No. 940 (July 1994).

⁴⁵⁰ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, IDRC, 2001, pp 66-67.

⁴⁵¹ Mehrdad Payandeh *United Nations, Military Intervention, and Regime Change in Libya*, *Virginia Journal of International Law*, (2011) Vol. 52, No. 2 .

law in order to understand the substantive and formal aspects of this practice, which falls within the scope of international conventions and customary international law. In addition to the earlier discussion of international jurisprudence on topics related to international intervention, this analysis will aid in the objectively studying intervention to support the right to political self-determination and in determining its logical consequences.

3.2 Legal aspects of international intervention

Throughout history, differences in visions and international interests have driven the idea of international intervention through several stages to reach its current state, with all its attendant contradictions.⁴⁵² Despite a sometimes contentious history, the recurrence of wars has resulted, in most legal systems, in recognition of the necessity for what here is called international humanitarian intervention. The need for humanitarian intervention consistently emerges with the outbreak of international and domestic conflicts. Populations usually face occupation, colonialism or civil wars because of a power struggle or changes in the political system made through the use of armed force. Naturally, these violent events are accompanied by such negative effects as murder, persecution, deportation and the destruction of property.

In all these circumstances, humans need the legal protection established by the rules of international law, which aim to protect individuals' dignity and restore their rights.⁴⁵³ Thus arises the need to act within the international legal framework to protect those people whose rights have been violated. Such intervention has to be legitimate under international law in order to ensure that the effort by an international organisation will succeed and to avoid any deviations that would reflect negatively on the intervention.⁴⁵⁴

However, contemporary international law has characterised international humanitarian intervention with non-specific features. Even under existing international legal regulation, determining the specific legal rules on this subject can be challenging. Difficulties exist despite the adoption of customary rules for international humanitarian intervention in

⁴⁵² Jackson Julie, An Update On: Self-Determination and Humanitarian Intervention in a Community of Power by James A.R. Nafziger, *Denver Journal of International Law and Policy* (1998) Vol. 26, No. 5 .

⁴⁵³ Cristina Gabriela Badescu, *Humanitarian Intervention and the Responsibility to Protect: Security and Security and Human Rights*, London: Routledge, 2012, p. 24.

⁴⁵⁴ Sean Murphy, *Criminalizing Humanitarian Intervention*, *Case Western Reserve Journal of International Law*, (1998) Vol. 41, No. 2-3.

traditional international law.⁴⁵⁵ This situation might be the result of circumstances in the period when contemporary international law was drafted. After World War II and during decolonisation, the framers of this law did not encourage the use of force by a state or group of states in the internal affairs of another country. The main objective of the writers of international law was to achieve global security and stability at a time when the world was suffering from wars, killing and destruction. Human rights were not a major priority; however, the situation has reversed, and current methods of dealing with international turmoil include modern regional organisations taking an active interest in human rights.⁴⁵⁶

Accordingly, many international organisations have bylaws that allow members to engage in international intervention under prescribed conditions. For example, Article 4, Paragraph H of the Constitutive Act of the AU approves of African countries intervening in the internal affairs of any African country where a violation of human rights has occurred. The legal texts of some international conventions permit indirect intervention.⁴⁵⁷

However, identifying a general legal theory of international humanitarian intervention held by an international legal organisation is difficult. These organisations' legal texts, such as Article 2(7) of the UN Charter, do not define the circumstances and conditions for or impose on such intervention or impose restrictions.⁴⁵⁸ At the same time, the international conventions and regional agreements have focused on a broader range of human rights and specified the appropriate conditions for conduct intended to protect those rights.⁴⁵⁹ Accordingly, it is important to study the legal rules regulating international humanitarian intervention and to examine some cases of intervention in light of those international rules.

⁴⁵⁵ Marcus, I. Maxine, Humanitarian Intervention without Borders: Belligerent Occupation or Colonization? *Houston Journal of International Law* (2002) Vol. 25, No. 1.

⁴⁵⁶ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, 2003, p. 77.

⁴⁵⁷ Constitutive Act of the African Union (2000) (AU Constitutive Act)
<http://www.africaunion.org/root/au/AboutAU/Constitutive_Act_en.htm> accessed 25 July 2011.

⁴⁵⁸ J. L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, p. 242. Also see the Charter of the United Nations (1945) 1 UNTS XVI art 2(7).

⁴⁵⁹ Jason Daniel, The Holy See, Historicity and Humanitarian Intervention: Using Integrative Jurisprudence to Inform Contemporary Practice, *Texas International Law Journal* (2006) Vol. 41, No. 1.

3.3 The legal rules and international intervention

The rules of international law come from two primary sources. The first is international habits that are embodied in customary rules, and the second is the explicit consent of the countries as expressed in conventions.⁴⁶⁰ Customary rules were long been the most important as they have offered flexibility and dealt with serious legal matters.⁴⁶¹ Their importance has ebbed in contemporary international law, which instead focuses on the legal rules arising from international agreements. However, this retreat from in customary rules does not reduce the effective role in establishing rules through international conventions. The importance of these rules has increased significantly in public international law, as they represent an important way for the state to comply with certain specific customs and thereby to participate in the wording of treaties or conventions.

Thus, as a legal topic, these rules address international humanitarian intervention in general. This understanding has allowed states to accept such interference under international law, whether authorised by customary rules or the rules of a convention.

This part of the dissertation is divided into two sections. The first examines the practice of humanitarian intervention in international affairs under customary international rules, while the second deals with the legal rules made by international conventions and treaties.

3.3.1 International humanitarian intervention under customary international rules

The rules of international customary law contributed greatly to shaping the development of contemporary international law, and the international community has been enriched through legal rules that meet the changing needs of a globalised world. One positive result of

⁴⁶⁰ Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford University Press, 2007, p. 30.

⁴⁶¹ Customary rules have always bridged the gaps left by international treaties and conventions and are an important source at international conventions and treaties. See Mark Eugen Villiger, *Customary International Law and Treaties: A Study of Their Interactions and Interrelations, with Special Consideration of the 1969 Vienna Convention on the Law of Treaties*, Dordrecht; Lancaster, Nijhoff, 1985, p.164. See also Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania State University Press, 2002, p. 113.

incorporating customary rules is a sense of flexibility and abundance in the legal realm. Thus, many emerging legal norms in contemporary international law embody international customs previously settled among countries.⁴⁶²

International custom cannot be established without two elements: the practices of states and the belief that these practices are required. The first element is achieved by the materialistic behaviour of countries; we must acknowledge that states often behave in this way. In addition, this behaviour must be repeated in new cases of similar legal action taken by states which accept this act or behaviour. The second element is achieved through agreement that it is compulsory to follow the rule of international law in the context of a particular event.⁴⁶³ Article 38 of the Statute of the ICJ indicates this belief by stating that the acceptability of customary law is evidenced by its repeated use. Accordingly, international practices must stem from individuals and states' belief in certain legal rules.⁴⁶⁴

A careful historical reading of international humanitarian intervention finds that the international community has accepted this practice through the adoption of a number of ideas. The concept of the duty to intervene originated in the sixteenth century during Europe's expansion after the discovery of lands outside Europe.⁴⁶⁵ European countries adopted this notion in customary formula in order to legitimise the search for and control over new territories.

This customary formula was among the international community's justifications for engaging in war and intervention and is not far from the just war theory that prevailed in the Middle Ages.⁴⁶⁶ Interestingly, the theory of just war emerged from the need to find mitigating reasons for conducting war, as Christianity prohibited war. This theory grants states the right

⁴⁶² Swaine Edward, Rational custom.(Customary International Law) Duke Law Journal (2002) Vol. 52, No. 3.

⁴⁶³ Mark Eugen Villiger, Customary International Law and Treaties: A Study of Their Interactions and Interrelations, with Special Consideration of the 1969 Vienna Convention on the Law of Treaties, Dordrecht; Lancaster: Nijhoff, 1985, pp. 26-27.

⁴⁶⁴ Statute of the International Court of Justice (1945) (ICJ Statute)
<http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0#CHAPTER_II>.

⁴⁶⁵ Brendan Simms, D.J.B. Trim, Humanitarian Intervention: A History, Cambridge University Press, 2011, p. 31.

⁴⁶⁶ Arkadiusz Domagala, Humanitarian Intervention: The Utopia of Just War? The NATO intervention in Kosovo and the restraints of Humanitarian Intervention, Sussex European Institute, 2004.

to engage in war only for a just cause.⁴⁶⁷ Traditionally, the only clear reason for going to war was to prevent injustice and protect individuals and groups from murder and persecution.⁴⁶⁸

Thus, the theory of just war might have contained the precursors to the idea of humanitarian intervention. Military intervention in the internal affairs of a state or group of states could be undertaken to protect the rights of citizens and to prevent damage and never without such justification.

This theory paved the way for the increasing international humanitarian interventions by various states in the following centuries. For example, the British and French intervened in Greece in 1829 to prevent the violation of human rights by the Ottoman Empire, and European powers again intervened on the island of Crete in 1868 under the pretext of protecting the Christian peoples of the Ottoman Empire entity against rights violations.⁴⁶⁹ In addition, many international conferences discussed international issues involving the internal affairs of a particular country or specific region. Such negotiations include the 1830 London Conference on the issue of Greece⁴⁷⁰ and the 1940 London Conference on the issue of Egypt.⁴⁷¹ These international practices strongly indicate that traditional international law had adopted the customary rules permitting intervention in the affairs of other countries for the purposes of protecting human rights and preserving individual human dignity and life. In the case of human exposure to brutal treatment and the abuse of individual rights by the state or the government of its citizens, such intervention became a duty.

Accordingly, in the global human conscience, international humanitarian intervention has been associated with international responsibility to ensure stability and guarantee individuals their rights and freedoms. Such responsibility provides justification for all states to intervene to protect human life.

However, some parties of the international community and international jurists have questioned this customary rule and the motivations for such interventions. Some argue that

⁴⁶⁷ Sean D. Murphy, *Humanitarian Intervention: Humanitarian Intervention: The United Nations in an Evolving World Order*, University of Pennsylvania Press, 1996, pp. 40-41.

⁴⁶⁸ Arkadiusz Domagala, *Humanitarian Intervention: The Utopia of Just War? The NATO intervention in Kosovo and the restraints of Humanitarian Intervention*, Sussex European Institute, 2004.

⁴⁶⁹ Brendan Simms, D.J.B. Trim, *Humanitarian Intervention: A History*, Cambridge University Press, 2011, p.183.

⁴⁷⁰ *Ibid.*, p. 138.

⁴⁷¹ *Ibid.*, pp.146, 164.

humanitarian intervention and related practices go beyond humanitarian efforts and become the means to serve international interests.⁴⁷² The practice of international humanitarian intervention has always been challenged, even under contemporary law as the major powers intervene under the pretext of protecting rights.⁴⁷³ Moreover, opponents to this customary rule say that international humanitarian intervention has occurred in many cases but not in others equally compelling, as was the case in South Africa; therefore, one of the most important elements of customary rule has been neglected.

At the same time, the customary rule that allows humanitarian intervention sometimes conflicts with other customary rules that have developed under international law, such as the concept of sovereignty which treats intervention as a violation of the state's independence.⁴⁷⁴ Therefore, other customary rules calling for non-interference in the internal affairs of states under all circumstances were formed. US President James Monroe supported this position in 1823 with a proclamation preventing European countries from interfering in the internal affairs of South American countries.⁴⁷⁵

However, practices intended to ban international humanitarian intervention have largely been absent on the international level. Thus, the customary rule prohibiting international humanitarian intervention has lacked a component essential in similar cases. Article 38 of the Statute of the ICJ establishes that customary rules apply when international practices have been repeatedly implemented in similar situations, as international intervention to protect

⁴⁷² Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, 2003, p. 41.

⁴⁷³ Aleksandar Jokic, *Humanitarian Intervention: Moral and Philosophical Issues*, Thomas Lister, 2003, p 153.

⁴⁷⁴ Since the emergence of the nation-state, sovereignty has served as a central legal concept regarding the independence of the state in the administration of the region and disposition of natural resources without the involvement of outside parties or the intervention of other states. The concept of sovereignty is concentrated in the state's authority over the region of the state. If the state does not have absolute power over this region, its sovereignty has become deficient. The concept of sovereignty has evolved since the Treaty of Westphalia in 1648 such that it mainly addresses the state with respect to the will of other nations and non-interference in its affairs. .See Trudy Jacobsen, Charles Sampford. *Re-envisioning Sovereignty: The End of Westphalia*. Ash Gate Publishing, 2008 pp 8-26 .Also see Antony Anghie. *Imperialism, Sovereignty and the Making of International Law*. Cambridge University Press, 2007 pp. 31- 86. Also see Robert Jackson, Robert H. Jackson, *Sovereignty at the Millennium*, Wiley-Blackwell (1999) Issue 3, p. 1.

⁴⁷⁵ Andrew Gray, *Indigenous Rights and Development: Self-Determination in an Amazonian Community*; Berghahn Books, 1997, p. 48.

human rights has been.⁴⁷⁶ Moreover, states and international organisations have tended to act to protect human rights and, therefore, have resisted giving up those rights.⁴⁷⁷

In recent times, the issue of humanitarian intervention has become controversial and sparked many differences in international legal circles, especially given the legal intellectual development of and the marked interest in human rights and support of freedoms. These practices raise a number of questions and discussions, the most important being the practice of the UN to permit intervention for (human rights if this practice has been repeated in similar cases in the past. It is important to point out that customary rules are not limited to the practices of countries but extend to those of international organisations.⁴⁷⁸ In essence, the content of a customary rule is determined first by a decision that establishes the rule's elements and then by repetition in similar cases.⁴⁷⁹

International organisations usually make decisions that establish a customary rule when a similar written rule is missing from the code of the organisation and from the legal statutes.⁴⁸⁰ Most importantly, the decision on which a customary rule is based must be specific, handle matters of a general nature and touch the basic needs of human beings.⁴⁸¹ Therefore, the decision reflects public will and can be inferred as having been approved by a majority vote of the members. It is believed that the protection of human rights and freedoms reflects the will of the people, as shown by support for international resolutions on international humanitarian intervention. Take, for example, Resolution 770 (1992) calling on states to coordinate humanitarian aid in Bosnia and Herzegovina,⁴⁸² Resolution 872 (1993) which determined the establishment of a peacekeeping operation aimed at ending the conflict in Rwanda and helping the Rwanda people hold democratic elections,⁴⁸³ and Resolution 1973 (2011) which authorised the Member States to take all necessary measures to protect the Libyan people, as well as the imposition of a no-fly zone to prevent Gaddafi's forces from

⁴⁷⁶ The Statute of the International Court of Justice (1945).

⁴⁷⁷ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, 2003, p. 41.

⁴⁷⁸ Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania State University Press, 2002, p. 342.

⁴⁷⁹ Aleksandar Jokic, *Humanitarian Intervention: Moral and Philosophical Issues*, Thomas Lister, 2003, p. 130.

⁴⁸⁰ Daniel H. Joyner, *The Kosovo Intervention: Legal Analysis and a More Persuasive Paradigm*, *The European Journal of International Law* (2002) Vol 13, pp. 597, 619.

⁴⁸¹ Nigel S. Rodley and Basak Cali, *Kosovo Revisited: Humanitarian Intervention on the Fault Lines of International Law*, *Human Rights Law Review* (2007) Vol. 7, No.3.

⁴⁸² UN, Security Council, Resolution No.770 (August 1992).

⁴⁸³ UN, Security Council, Resolution No.872 (October 1993).

launching air strikes against the Libyan people, who were demanding an end to the dictatorial rule in Libya.⁴⁸⁴

Through resolutions and many international conventions, international organisations, especially the UN, have contributed to establishing a set of customary international rules dedicated to protecting human rights.⁴⁸⁵ These documents include the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In addition, the UN General Assembly has often condemned human rights violations in many countries, as when it issued A/RES/66/176 (2011) to condemn human rights violations in Syria.⁴⁸⁶ In most cases, UN General Assembly resolutions are accepted as valid international customary rules under the general principles and moral and political standards used to guide the conduct of states. Therefore, those rules are used similarly to the customary rules meant to prevent violations of human rights and freedoms guaranteed by international law.

Many countries have repeatedly imposed economic sanctions on a particular country because of human rights violations in the state's territory and a lack of respect for individual freedoms. Such international intervention attacks the economic sovereignty of the state and targets its resources. Such actions include sanctions on Myanmar and Serbia.⁴⁸⁷ The international community has also used military means in many cases of international humanitarian intervention, as in Kosovo and UN Security Council action in Somalia and Rwanda.

3.3.2 Legal rules derived from international conventions

In the historical development of the concept of international intervention, many interventions in the nineteenth century were based on international conventions. For example, the Paris Convention of 1814 held by Austria, England, Russia and France after the fall and abdication

⁴⁸⁴ UN, Security Council, Resolution No.1973 (March 2011).

⁴⁸⁵ J. L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, p.189. See also Michael Byers, *Custom, Power and the Power of Rules: International Relations and Customary International Law*, Cambridge University Press, 1999, 2007. Also Roozbeh Baker, *Customary International Law in the 21st Century: Old Challenges and New Debates*, *European Journal of International Law*, (2010) Vol 21, pp. 173-204.

⁴⁸⁶ UN General Assembly, Res A/RES/66/176 (February 2012)

<[http://www.un.org/ga/search/view_doc.asp?symbol= A/RES/66/176](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/176)>.

⁴⁸⁷ Janne Haaland Matlary, *Intervention for Human Rights in Europe*, Palgrave, 2002, p. 197.

of Napoleon⁴⁸⁸ gave these states the right to intervene in any revolutionary movement. After Napoleon's return and subsequent defeat at the Battle of Waterloo in 1815, the second Paris Convention confirmed the legitimacy of intervention in the internal affairs of states. Article VI of the convention permits diplomatic and military intervention whenever the circumstances so required.⁴⁸⁹

The Treaty of London (1827), considered one of the most important legal rules on international intervention to protect populations, was intended to maintain the stability and calm of Europe. Accordingly, the treaty allowed Britain, France and Russia to intervene to protect Christians in Greece from persecution by the Ottoman Empire.⁴⁹⁰ In 1878, the Treaty of Berlin was signed, reinforcing the right of humanitarian intervention. The treaty gave the right to intervene to protect the population in the European parts of the Ottoman Empire and bound the Ottoman Empire to several standards, including religious freedom, in order to ensure the protection of its citizens.⁴⁹¹

In addition, in many conventions and treaties sponsored by the League of Nations permitted international humanitarian intervention to protect minorities. For example, the Treaty of Saint-Germain and the Treaty of Lausanne⁴⁹² imposed a number of obligations on states that had fought alongside Germany during World War I to favour minorities in their territory.⁴⁹³

Those conventions created two types of guarantees designed to protect minorities: internal and international. Article 62 of the Treaty of Saint-Germain and Article 37 of the Treaty of Lausanne give internal safeguards for the protection of minorities and stipulated that the signatories cannot issue legislation, laws or regulations contradicting these agreements. In this way, the international safeguards crystallised, giving the League of Nations a crucial role in the protection of minorities. The Council of the League of Nations had the right to pursue

⁴⁸⁸ Luis Kutner, *World Habeas Corpus and Humanitarian Intervention*, Valparaiso University Law Review (1985) Vol 19, pp. 593-631.

⁴⁸⁹ J.H. Leurdijk, *Intervention in international politics*, Leeuwarden: Eisma, 1986, p 179. Also see Carl Cavanagh Hodge, *Encyclopedia of the age of imperialism: 1800-1914*, Greenwood Press, 2008, p. 162.

⁴⁹⁰ Davide Rodogno, *Against Massacre: Humanitarian Interventions in the Ottoman Empire*, Princeton University Press, 2012, pp. 162-169.

⁴⁹¹ *Ibid*, pp. 58-62.

⁴⁹² Bjorn Arp, *International Norms and Standards for the Protection of National Minorities: Bilateral and Multilateral Texts with Commentary*, Martinus Nijhoff, 2008, p. 69.

⁴⁹³ Li-Ann Thio, *Managing Babel: The International Legal Protection Of Minorities In The Twentieth Century*, Martinus Nijhoff, 2005, p. 50.

those conventions and was the only body authorised to amend the provisions in these conventions. In addition, the council had the authority to take appropriate measures in the case of any violations of those agreements or of minority rights.⁴⁹⁴

Those rules placed international obligations on the states concerned to respect these rules, to prevent their violation and to protect minority rights. Those conventions confirmed the right of the League council to take any action it deemed appropriate to stop such violations. The council's authority to intervene to protect humanity from such violations was based not on the Covenant of the League of Nations but on the conventions for the protection of minorities. Thus, the Council of the League of Nations accepted the legal rules enshrined in the conventions and the obligation to take protective measures, indicating the international community's willingness to permit humanitarian intervention in this era.

Under contemporary international law, international humanitarian intervention finds its justification in many international conventions and treaties in force. One such instrument is the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Specifically, Article 8 of this convention gives any signatory party the right to request that the organs of the UN, in accordance with its charter, take appropriate measures to prevent or stop any instance of genocide.⁴⁹⁵ The article explicitly grants the UN the right to intervene, following the measures in its charter, in cases of genocide and other criminal acts described in Article 3 of the convention, which include conspiracy and incitement to direct participation in the crime of genocide.⁴⁹⁶

⁴⁹⁴ In Article 62 of the Treaty of Saint-Germain, Austria pledges to uphold all of the conditions contained in the treaty, including provisions for the rights of minorities. Article 63 stipulates that Austria will protect the rights of minorities and the freedom of all its inhabitants without regards to distinctions of birth, nationality, language, race or religion. Article 69 also makes it illegal for the government of Austria to modify any of these provisions without the approval of the League of Nations. Likewise, Article 37 of the Treaty of Lausanne states that Turkey is accused of enacting laws that contradict the provisions set out in the Treaty of Lausanne and private texts dealing with the protection of minorities. Article 44 of the Treaty of Lausanne grants the League of Nations the authority to monitor these commitments by Turkey and forbids Turkey from modifying the terms of this treaty without the consent of a majority of the Council of the League of Nations; see the treaty of Saint-Germain Part III <<http://www.servat.unibe.ch/icl/au05000.html>> accessed 29 April 2012, and the Treaty of Lausanne Section III <<http://www.hri.org/docs/lausanne/part1.html>> accessed 29 April 2012.

⁴⁹⁵ J.L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, p.44.

⁴⁹⁶ Convention on the Prevention and Punishment of the Crime of Genocide (1948) <<http://www2.ohchr.org/english/law/genocide.htm>>.

However, this article does not specify which organs of the UN possess the right to intervene with appropriate means. . However, if we consider that genocide is extensive killing with the clear intent to exterminate a particular ethnic group, it is appropriate that the UN's organs are responsible for protecting this particular ethnic group and have the right to intervene.⁴⁹⁷ According to Chapters VI and VII of the UN Charter, if the crime of genocide poses a threat to international peace and security, the Security Council shall play a pivotal role in the intervene to prevent this crime.

Additionally, the International Convention on the Suppression and Punishment of the Crime of Apartheid addresses the subject of international humanitarian intervention.⁴⁹⁸ Article 6 allows states that are party to the convention to carry out the decisions taken by the Security Council to prevent the crime of apartheid and suppress and punish the perpetrators.⁴⁹⁹ Thus, the Security Council may legitimately act to prevent and stop the crime of apartheid and punishment its perpetrators. In contrast, the Convention does not specify which organ of the UN may respond to violations of the terms of the convention.

The legality of intervention is found in sources beyond the Genocide Convention and the International Convention on the Suppression and Punishment of the Crime of Apartheid. International conventions on human rights, particularly those which include specific mechanisms for monitoring respect for human rights, permit international intervention. Policies adopted by those conventions can be used to justify some kinds of intervention. This legitimacy is confirmed by the refusal of some countries to join treaties and conventions aimed at respecting and protecting human rights. For example, of the 193 countries that belong to the UN, only 168 have ratified the International Covenant on Civil and Political Rights.⁵⁰⁰ However, submission to international conventions does not represent a violation of countries' sovereignty; rather, these conventions serve to protect the sovereign rights of the signatories.

⁴⁹⁷ Randall Peerenboom, Human Rights and Rule of Law: What's the Relationship? Georgetown Journal of International Law (2005) Vol. 36, pp. 05-31.

⁴⁹⁸ Sean Murphy, Humanitarian Intervention: The United Nations in an Evolving World Order, University of Pennsylvania Press, 1996, pp. 120-123.

⁴⁹⁹ International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) <<http://www1.umn.edu/humanrts/instree/apartheid-supp.html>> accessed 06 May 2012.

⁵⁰⁰ UN Treaty Collection, International Covenant on Civil and Political Rights , available at (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) accessed 18/07/2014.

In a similar vein, many international committees are entrusted with protecting human rights. One such body is the Human Rights Committee formed under Article 28 of the International Covenant on Civil and Political Rights.⁵⁰¹ Another is the Committee against Torture, established under Article 17 of the 1984 Convention against Torture.⁵⁰² In addition, the Economic and Social Council No. 17 established the Committee on Economic and Social Rights to monitor states' commitment to the implementation of the International Covenant on Economic, Social and Cultural Rights.⁵⁰³

The work of conventions or committees monitoring these covenants has two principal goals. First is to protect the human rights guaranteed by those conventions and the committee's work, regardless of the mechanism used to achieve such protection. Second is to protect cross-border work when humanitarian intervention occurs across borders.⁵⁰⁴

Moreover, many regional conventions have embraced aspects of appropriate international intervention in the form of codified agreements. The European Convention on Human Rights, established by the Council of Europe in 1950, can be considered a clear example of such an intervention agreement.⁵⁰⁵ Article 19 creates a sophisticated mechanism for the promotion and protection of human rights: the European Commission of Human Rights, charged with monitoring human rights.⁵⁰⁶ In accordance with the rights established in the convention, the European Court of Human Rights also considers violations of human rights.⁵⁰⁷

As well, Article 30 of the African Charter on Human and Peoples' Rights directs the establishment of a committee to accomplish the purposes of the charter. Article 45 assigns

⁵⁰¹ Kumar Ambika, Using Courts to Enforce the Free Speech Provisions of the International Covenant on Civil and Political Rights, *Chicago Journal of International Law* (2006) Vol. 7, pp 351-364 .

⁵⁰² Ronagh McQuigg, How Effective is the United Nations Committee against Torture? *European Journal of International Law* (2011) Vol 22, pp. 813-828.

⁵⁰³ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, 2003, p. 112.

⁵⁰⁴ David S. Weissbrodt, Connie De La Vega, *International Human Rights Law: An Introduction*, University of Pennsylvania Press, 2007, p. 55.

⁵⁰⁵ Ibid, pp. 311-316.

⁵⁰⁶ European Convention on Human Rights (1950) <<http://www.hri.org/docs/ECHR50.html>> accessed 02 March 2012.

⁵⁰⁷ Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*, Cambridge University Press, 2010, pp. 159-160.

this committee a large role in the investigation and monitoring of violations in order to protect human rights in African countries.⁵⁰⁸

As is clear from the many cases examined, no international convention has dealt with international humanitarian intervention in a clear and detailed manner. However, it is also evident that some international conventions contain provisions that can allow international humanitarian intervention.

Although some agreements also have provisions at cross-purposes with intervention, interested parties commonly refer to those texts that do not make clear or explicit statements on military intervention. Other provisions grant powers to the committees overseeing the protection of human rights and establish courts to consider issues that fall within the domestic jurisdiction of signatories.

A more important issue is the collision of international intervention with legal principles developed under international legal norms. The most prominent of these principles is the principle of non-interference, which evolved from the concept of absolute sovereignty. The principle of non-interference clearly poses a legal challenge to international humanitarian intervention, as confirmed by all the evidence from the deliberations in numerous international meetings dealing with international jurisprudence. In addition, the legal texts upon which those principles are based have been used to condone humanitarian intervention in many cases.⁵⁰⁹

Accordingly, it is appropriate to examine the concept of international sovereignty, particularly the principle of non-interference, in order to understand the legal consequences of the legitimacy of international intervention to protect human rights.

⁵⁰⁸ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 30<<http://www1.umn.edu/humanrts/instree/z1afchar.htm>> accessed 08 March 2012.

⁵⁰⁹ Anthony F. Lang, *Just Intervention*, Georgetown University Press, 2003, p. 64; Also see Wheeler Nicholas, *Legitimizing Humanitarian Intervention: Principles and Procedures*, Melbourne Journal of International Law (2001) Vol. 2, No. 2 ; see Anne Peters, *Humanity as the A and Ω of Sovereignty*, European Journal of International Law (2009) Vol. 20, Issue 3, pp. 513-544; Peter Hilpold, *Humanitarian Intervention: Is There a Need for a Legal Reappraisal?* European Journal of International Law (2001) Vol.2, pp. 437-468; Simon Chesterman, *Just War Or Just Peace? Humanitarian Intervention and International Law*, Oxford University Press, 2002, pp. 91-93.

3.4 The principle of non-interference and state sovereignty in international law

Since the seventeenth century, the international system of sovereign countries has developed around a number of customary or written rules.⁵¹⁰ The 1648 Treaty of Westphalia forms the basic foundation of international law from which the core features of sovereignty have been drawn.⁵¹¹ However, the components of sovereignty today are not restricted by the settlements of Westphalia. The objective criteria of international law that inform the concepts of jurisprudence and sovereignty were developed largely in the eighteenth and nineteenth centuries. During that time, the concepts of territorial sovereignty, formal equality between countries and non-interference in the internal affairs of other countries gradually formed the basis for notions of international legal obligations which have become fundamental principles of the international community.⁵¹²

Numerous decisions and legal instruments have been devoted to the concept of sovereignty, such as UN General Assembly Resolution No. 32/155 on the Implementation of the Declaration on the Strengthening of International Security. The fifth paragraph of the declaration prohibits states from threatening or using force and requires states to abide by the principles of sovereign equality and territorial integrity in their relations with other countries.⁵¹³

The sovereignty of any state results from the enjoyment of international relations and legal status, which grants states the freedom to exercise its sovereignty and conduct its affairs.⁵¹⁴

⁵¹⁰ Robert Jackson, Robert H. Jackson, *Sovereignty at the Millennium*, Wiley-Blackwell (1999) Issue 3, p. 1.

⁵¹¹ Trudy Jacobsen, Charles Sampford. *Re-envisioning Sovereignty: The End of Westphalia*. Ash Gate Publishing, Ltd., 2008 p. 8; Also see Christopher Harding, Chin L. Lim. *Renegotiating Westphalia: Essays and Commentary on the European and Conceptual Foundations of Modern International Law*. Martinus Nijhoff Publishers, 1999, p. 60.

⁵¹² Antony Anghie. *Imperialism, Sovereignty and the Making of International Law*. Cambridge University Press, 2007 p. 57. See also Gerard Kreijen. *State Failure, Sovereignty and Effectiveness: Legal Lessons from the Decolonization of Sub-Saharan Africa*. Martinus Nijhoff Publishers, 2004, p. 42. Daniel Philpot, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations*. Princeton University Press, 2001, p.93. David Raic. *Statehood and the Law of Self-determination*. Martinus Nijhoff Publishers, 2002, p. 25.

⁵¹³ UNGA 'Implementation of the Declaration on the Strengthening of International Security' (1970) <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/32/154&referer=http://www.un.org/Depts/dhl/resguide/r32.htm&Lang=E> accessed 1 June 2011.

⁵¹⁴ Robert Lancaster, *Intervening Interests: Humanitarian and Pro-Democratic Intervention in the Asia-Pacific*, Australian International Law Journal (2009) Vol. 16, pp 103-131 ; see also see Klinton Alexander, *NATO'S Intervention in Kosovo: The Legal Case for Violating Yugoslavia's National Sovereignty in the Absence of Security Council Approval*, Houston Journal of International Law (2000) Vol. 22, No.3.

The principle of state sovereignty gained legal status in modern politics through the practices and thought that became dominant after World War II. Over time, this outlook has come to perceive nationalism as the embodiment of the freedom and independence of a country and its supreme authority over its territory and population.⁵¹⁵ Therefore, the exercise of sovereignty has two dimensions. The first is internal, which means that the state possesses the absolute legitimate authority over all individuals and groups that live within its territory, and any violations of its decisions subjects the officers of the state to punishment.⁵¹⁶ The second consists of independence from external control and intervention by any other country or international organisation.⁵¹⁷

During the emergence of the nation-state, the concept of sovereignty crystallised as the need to protect a state or humanitarian groups, which led to militancy and the expansion of the concept of sovereignty to free countries from subjection to higher political authority. Accordingly, each state may make decisions without external interference and has complete freedom to choose its own political, legislative, economic and social systems and the measures it deems appropriate to achieve its foreign interests.

In the development of the idea of sovereignty, practitioners of international jurisprudence adopted the principle of non-interference as a basis for the international reactions. This principle stems from adherence to the principle of sovereignty, which prevents countries from committing actions that constitute an attack on the sovereignty of another country.⁵¹⁸

And thus, sovereignty occupies a central position in one of the most important principles in international law, that of non-interference. This principle is inherent in all documents and legislation in international law. All international conventions and treaties are based on mutual respect among nations and express the spirit of equality and peaceful relations, as well as mutual recognition. This approach is derived from the texts and principles of the UN Charter.

⁵¹⁵ William Magnuson, *The Responsibility to Protect and the Decline of Sovereignty: Free Speech Protection under International Law*, *Vanderbilt Journal of Transnational Law* (2010) Vol. 43, No.2.

⁵¹⁶ Deen Chatterjee, Don E. Scheid, *Ethics and Foreign Intervention*, Cambridge University Press, 2003, p.179.

⁵¹⁷ Helle Malmvig, *State Sovereignty And Intervention: A Discourse Analysis of Intervention And Non-interventionary Practices in Kosovo And Algeria*, London: Routledge, 2006, pp. 96-104.

⁵¹⁸ David Wippman, *Defending Democracy through Foreign Intervention*. *Houston Journal of International Law* (2009 Vol. 19, No. 3).

3.4.1 The principle of non-interference

The principle of non-interference in the internal affairs of states is a basic foundation on which the post-World War II world was established. This principle is based on the UN Charter, which establishes international law banning intervention in the internal affairs of other different countries. The most important statute is Article 2 (7)'s prohibition on interference in the internal affairs of states based on the sovereign equality of each country.⁵¹⁹

Does this mean that a party to international law may not interfere in the internal affairs of a country, whatever the reasons and justifications? Or do certain conditions, if met, grant legitimacy to intervention? If the answer to the latter question is yes, the next question is: Do these conditions include those situations in which the public authorities of the state violate human rights in general or the right to political self-determination in particular? Or does the possibility of intervention still fall within the domestic jurisdiction of the state? If the latter is the case, then, under international law, states may not intervene in the internal affairs of other states.

Knowledge of the framework for the application of the non-interference principle has a material effect on the answers to these questions, enabling analysing those restrictions and identifying cases in which international intervention is permitted. In fact, as a result of international differences, the framework for the application of the principle of non-interference in international issues is neither easily defined nor identified.

The principle of non-interference acquired legal force only after the UN Charter documented it in 1945. Article 2 (7) stipulates that 'nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state'.⁵²⁰ This article corresponds with Article 10 of the Covenant of the League of Nations,⁵²¹ which mandates that member states adhere to the concept of internal sovereignty and refuse to acknowledge other international authorities as superior to their national authority. This text certainly restricts the UN from interfering in many cases which

⁵¹⁹ Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, Kluwer Law International, 1999, pp. 64-74.

⁵²⁰ UN Charter (1945).

⁵²¹ The Covenant of the League of Nations (1919).

fall within the domestic jurisdiction of member states. The importance of the principle of non-interference is manifested in the international legal regime which governs the behaviour of political units and ensures their ability to coexist by granting all equal sovereignty and freedom to choose the political, social, cultural and economic systems that fit the needs and wishes of their citizens.⁵²²

Taking into consideration the exception of the UN Security Council, compliance with these articles extends to all organs and activities of the UN and could play an important role in supporting freedoms and human rights. Take, for example, the ICJ's response when requested in UN General Assembly resolution No. 294 to interpret the peace agreements among Bulgaria, Hungary and Romania. This resolution pushed these countries to call the General Assembly's request for an interpretation of those conventions by the ICJ interference in their internal sovereignty. In the light of these considerations, the court denied the request because, as a UN organ, it should not interpret international conventions, mainly due to the domestic jurisdiction of the states concerned. UN organs are committed to respecting the UN Charter, in particular Article 2(7).⁵²³

The UN also faces many difficulties when applying Article 2 (7), especially when exercising some of its jurisdictional powers. According to Chapters IX and X, in particular Articles 55 and 62, the UN enjoys wide powers in economic and social areas.⁵²⁴ However, the UN can fulfil its duties without interfering in the internal affairs of member states only with difficulty. Moreover, in accordance with Article 56, member states have committed, individually and collectively, to co-operating with the organisation to achieve the purposes set forth in Article 55.⁵²⁵ Thus, the previous texts can be interpreted as obliging member states to accept UN intervention in the areas provided for in Article 55, even if these areas involve the domestic jurisdiction of those countries.

⁵²² Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania State University Press, 2002, p. 182-186.

⁵²³ UN, General Assembly, Resolution No. 294 (1950). See also the Resolution to Interpretation of Peace Treaties with Bulgaria, Hungary and Romania <<http://www.icj-cij.org/docket/files/8/1865.pdf>> accessed 30 June 2012. See also Murphy, *Humanitarian Intervention* 130; see also Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order*, University of Pennsylvania Press, 1996, p. 130.

⁵²⁴ Donald R. Rothwell, Stuart Kaye, Afshin Akhtarkhavari, Ruth Davis, *International Law: Cases, Materials and Commentary*, Cambridge University Press, 2000, p. 469.

⁵²⁵ UN Charter (1945) Chapter IX.

Taking Article 2 (7) as the basis for this principle, it can be argued that this provision prevents only the UN from intervening in the internal affairs of countries. However, drawing upon Article 3 of the Rights and Duties of States, the International Law Commission has interpreted the principle of non-interference as broadly and comprehensively as possible, prohibiting states from interfering in the internal affairs of other countries. Specifically, Article 3 of the Draft Declaration on Rights and Duties of States states that ‘every State has the duty to refrain from intervention in the internal or external affairs of any other State’.⁵²⁶

This declaration emphasises that the principle of non-interference prohibits intervention in the internal affairs of countries not only by the UN but also by nation states. However, some might object that this interpretation of the principle of non-interference is too broad and extends to international relations beyond the scope of the UN Charter. In this view, Article 2(7) supports a much narrower interpretation, as it clearly and explicitly prohibits the world organisation from such intervention. However, we should note that the UN agencies have applied this principle flexibly, without being restricted by prohibitions on interference by the organisation itself or its member countries.

This interpretation confirms the position taken by the Ukrainian delegate during the 1946 Security Council debate on the issue of Greece that the presence of British troops in Greece was interference in its internal affairs. The Ukrainian representative asserted that Article 2(7) does not give countries the right to intervene in the affairs of another country.⁵²⁷ Another example emerges from the Security Council discussion the situation in the Dominican Republic in 1965. The Uruguayan delegate said that the UN and its members must follow the principles proclaimed in Article 2 of the Charter, in particular the principle of non-interference in paragraph (7).⁵²⁸ During the heated debates in the Security Council on the situation in Georgia in the summer of 2008, the United Kingdom delegate said that Russia’s

⁵²⁶ Draft Declaration on Rights and Duties of States, UN International Law Commission (1949).

⁵²⁷ UN, Consideration of Questions under the Council’s Responsibility or the Maintenance of International Peace and Security 301–309 <http://www.un.org/en/sc/repertoire/46-51/46-51_08.pdf> accessed 28/06 2012. See also Thanasis D. Sfikas, *The British Labour Government and the Greek Civil War 1945-1949: The Imperialism of ‘Non-Interference’*, Ryburn, 1994, p. 133.

⁵²⁸ Max Hilaire, *Nijhoff Law Specials, International Law and the United States Military Intervention in the Western Hemisphere*, Martinus Nijhoff Publishers, 1997, p.57.

actions in Georgia must be considered a violation of Georgia's sovereignty and territorial integrity.⁵²⁹

It must also be pointed out that, through customary law, the prohibition on intervention in countries' internal affairs applies to those states that have joined the many international and regional conventions and agreements made over the past several decades. For example, in the first conference of the Group of Non-Aligned States held in Bandung in 1955, the principle of non-interference was one of ten principles included in an international charter to govern relations among different countries.⁵³⁰ The Conference of Security and Cooperation (held in Helsinki in 1975 confirmed that the principle of non-interference in the internal affairs of countries is one of the basic principles underlying relations between participating countries.⁵³¹

Additionally, in many decisions such as Resolution No. 2131 in 1965, the General Assembly has endorsed the principle of non-interference and called member states to respect it.⁵³² We must also include the declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States No. 36/103 in 1980.⁵³³ As for international justice, in 1947, the ICJ stressed the principle of non-interference in the judgment of the Corfu Channel Incident between Britain and Albania⁵³⁴ and in the issue of military activities and paramilitary actions between the US and Nicaragua in 1984.⁵³⁵ In addition, the legal provisions of many international conventions have recognised this principle, including Articles 2 and 3 of the

⁵²⁹ UN, Verbatim Record (10 August 2008)

<http://www.un.org/ga/search/view_doc.asp?symbol=S/PV.5953&referer=http://www.un.org/en/sc/meeting/s/records/2008.shtml&Lang=E> accessed 13 May 2012.

⁵³⁰ Hans von Mangoldt, Volker Rittberger, Franz Knipping, *The United Nations System and Its Predecessors: The United Nations system*, Oxford University Press, 1997, p. 143.

⁵³¹ Donald Rothwell, Donald Rothwell, Afshin A-Khavari, Ruth Davis, Stuart Kaye, Afshin A-Khavari, Ruth Davis, MSW Msw Msw, Stuart Kaye, *International Law: Cases, Materials and Commentary*, Cambridge University Press, 2000, p. 63.

⁵³² Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, UNGA Res 2331 (1965) (Declaration on the Inadmissibility) <<http://www.un-documents.net/a20r2131.htm>>, accessed 12 June 2011.

⁵³³ Declaration on the Inadmissibility <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/36/103&Lang=E&Area=RESOLUTION> accessed 12 June 2011.

⁵³⁴ Case of Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania), Application—British Memorial and Annexes <<http://www.ICJ-cij.org/docket/files/1/1499.pdf>> accessed 10 August 2011.

⁵³⁵ Case of the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) <<http://www.ICJ-cij.org/docket/files/70/9615.pdf>> accessed 09 August 2011.

Charter of the OAS⁵³⁶ and Article 3 of the Organisation of African Unity Charter.⁵³⁷ Moreover, the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States issued by the General Assembly under recommendation No. 2625 on 24 October 1970 expresses this principle as follows: ‘the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State...’.⁵³⁸

Thus, we can say that non-interference in the internal affairs of states has become a legal principles governing the contemporary world, whether within or external to the UN. Respect for this principle prevents any country from imposing its control on another by obliging them not to interfere in others’ internal affairs.

However, the implementation of this principle, particularly in the field of human rights and freedoms, has not yet reached the stage of consensus in international law among international jurists or nations and international organisations. Essentially, we have arrived at an advanced stage of attention to freedoms and human rights. Through the adoption of standards that promote democracy and gives political support to human rights, the international community generally has, agreed on the need not to go beyond protecting humans against murder, torture and persecution.⁵³⁹ Thus, the issue of humanitarian intervention poses a direct challenge to the ideas of sovereignty and non-interference, especially as it concerns direct intervention in the internal affairs of any country.

In modern times, the international community has witnessed many cases of international intervention intended, for the most part, to protect human rights and support the freedoms and rights of individuals. These methods of these interventions have varied from direct military action to economic or political acts. These developments have given rise to an important,

⁵³⁶ The Charter of the Organization of the American States (1948) .

⁵³⁷ African Union Charter (1963).

⁵³⁸ Declaration of Principles of International Law Concerning Friendly Relations, UNGA Res 2625 (October 1970).

⁵³⁹ Matthew Alan Hill, *Democracy Promotion and Conflict-Based Reconstruction: The United States & Democratic Consolidation in Bosnia, Afghanistan & Iraq*, Routledge, 2011, p. 47 ; see also Curtis Francis Doebbler, *International Human Rights Law: Cases and Materials*, CD Pub., 2004, 129; ; see also Edward Newman, Roland Rich, *The UN Role In Promoting Democracy: Between Ideals And Reality*, United Nations University Press, 2004, p.8; ; see also Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania State University Press, 2002, p.191; ; see also Using Law to Impair the Rights and Freedoms of Human Rights Defenders: A Case Study of Cambodia, *Journal of Human Rights Practice* (2012) Vol. 4 , pp. 312-333.

fundamental question: Are interpretations of the concepts of absolute sovereignty and the principle of non-interference becoming broad rather than narrow, permitting international humanitarian intervention when the circumstances warrant it? Or, put another way, has the principle of non-interference emerged from a stalemate as a flexible ideal allowing intervention in cases in which a majority of state actors agree that it is necessary for the protection and advocacy of human rights? The answer to these questions will be found through an analysis of the evolution of the principle of non-interference in modern international practices, conventions and doctrinal debates.

3.4.2 The concept of Non-interference in a transformative phase

The evolution of traditional legal principles must keep pace with changes in the contemporary international reality caused by new challenges and intellectual developments.⁵⁴⁰ This development is being imposed on international relations and thus strikes at the core of public international law. The doctrinal controversy on the impact of the concept of human rights has spread among scholars, in the corridors of the UN (and to the content of public international law).⁵⁴¹ These changes thus confront public international law with new challenges and developments, such as the gradual shift from the concept of absolute sovereignty to that of relative sovereignty⁵⁴² and of sovereignty as a responsibility. This shift can be considered a bridge linking the modern and traditional notions of state sovereignty.⁵⁴³

Since the mid-twentieth century, the idea of the international responsibility to protect the citizens of each state has emerged through the establishment of international organisations and committees concerned with human rights, courts of war crimes and the concept of crimes

⁵⁴⁰ J. L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, p. 6.

⁵⁴¹ Helen Stacy, *Human Rights for the 21st Century: Sovereignty, Civil Society, Culture*, Stanford University Press, 2009, p. 32.

⁵⁴² Natalie Luba Mychajlyszyn, Timothy Milton Shaw, *Twisting Arms and Flexing Muscles: Humanitarian Intervention and Peacebuilding in Perspective*, Ashgate, 2005, p. 24.

⁵⁴³ J. L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, p. 275.

against humanity.⁵⁴⁴ During the end of the Cold War and the fall of the Berlin Wall in the late twentieth century, these concepts developed rapidly and led to the wide spread of intellectual and doctrinal freedoms.⁵⁴⁵ These concepts thereby contributed to the emergence of the principle of sovereignty as a responsibility, which has been imposed as a mandate on the international community. This principle particularly applies to cases where a country fails or is unable or unwilling to carry out its responsibility to stop violence and persecution, displacement and torture and to achieve social justice and equality.⁵⁴⁶

In practical terms, the end of the Cold War and the fall of the Soviet Union had the greatest impact on focusing international attention on and granting flexibility in international decision-making on the human rights field. During the period of the Cold War, the UN Security Council served as the field for a fierce ideological battle between the Soviet Union and Western countries, specifically the United States, to protect the interests of and prevent intervention in each camp's allies.⁵⁴⁷

In my view, the principle of non-interference has achieved effectiveness in international law as a result of the following circumstances.

1. The chaotic and teeming world situation that unfolded in the period preceding the creation of contemporary international law, which saw many wars and permanent conflicts that led to human catastrophes, particularly the First and Second World Wars. This historical era contributed to the development of the concept of global peace and security. This concept seeks to restrict international disputes and has played a direct role in the development of the concept of sovereignty and the principle of

⁵⁴⁴ Regarding this issue, Jason Dominguez states that, since the Second World War, the international community has witnessed a dramatic shift in interest in human rights and international intervention to protect these rights. Through the development of regional and international treaties, international courts have created more opportunities for international intervention and have determined that may take place in the case of a failure by authorities to exercise their domestic responsibility to protect their citizens. Accordingly, in any conflict, the international balance tends to favour human rights over other principles of the laws, which means that the global trend has been towards attention to those rights. See Jason Dominguez, 'From Paralysis in Rwanda to Boldness in Libya: Has the International Community Taken 'Responsibility to Protect' from Abstract Principle to Concrete Norm under International Law?' *Houston Journal of International Law* (2011) Vol. 34, No.1.

⁵⁴⁵ Jennifer Welsh, *Humanitarian Intervention and International Relations*, Oxford University Press, 2003, p. 177.

⁵⁴⁶ J. L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, p. 275.

⁵⁴⁷ Stefan-Ludwig Hoffmann, *Human Rights in the Twentieth Century*, Cambridge University Press, 2010, p. 147.

non-interference through the establishment of the rules of law on which this principle is based.

2. During the Cold War, the division of the world into an Eastern and a Western camp contributed to the development of the principle of non-interference in international law and relations, whereby each camp opposed intervention by the other camp in different countries. In this way, each side intensified the principle of non-interference, and the scholars from each side narrowly interpreted the principle of non-interference to prohibit the parties from interfering with one another, whatever the reason. Given that both the Soviet Union and the United States both sat on the UN Security Council and possessed veto power, the seventh paragraph of Article II was adopted to resolve any questions raised in the Security Council or the General Assembly about interference in the internal affairs of any country. This paragraph addressed the political considerations of both the United States and the Soviet Union.

These political circumstances became evident when the Security Council initiated direct intervention in Somalia and Rwanda under the pretext of protecting human rights after the collapse of the Soviet Union and the end of the Cold War.⁵⁴⁸ In fact, 1992 marks a milestone in international humanitarian interventions. Previously, the UN carried out international interventions for the sole purpose of maintaining international peace and security. Since then, the Security Council frequently has sought to link humanitarian aid and Chapter VII of the UN Charter. For example, the Security Council issued several successive decisions relating to Somali affairs intended to providing humanitarian aid. Among these, resolutions Nos. 733 (1992),⁵⁴⁹ 751 (1992),⁵⁵⁰ 767 (1992)⁵⁵¹ and 794 (1992)⁵⁵² permit the international community to intervene directly using all available means.

These transformations thus have created a fit between the principles of sovereignty and human rights, making sovereignty not absolute but relative status. In confirmation, let us refer to UN Secretary-General Kofi Annan's his annual address to the General Assembly of 1999, in which he said:

⁵⁴⁸ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, 2003, p. 4.

⁵⁴⁹ UN, Security Council, Resolution No.733 (January 1992).

⁵⁵⁰ UN, Security Council, Resolution No.751 (April 1992).

⁵⁵¹ UN, Security Council, Resolution No.767 (July 1992).

⁵⁵² UN, Security Council, Resolution No.794 (December 1992).

State sovereignty, in its most basic sense, is being redefined by the forces of globalisation and international co-operation. The State is now widely understood to be the servant of its people, and not vice versa. At the same time, individual sovereignty—and by this I mean the human rights and fundamental freedoms of each and every individual as enshrined in our Charter—has been enhanced by a renewed consciousness of the right of every individual to control his or her own destiny.⁵⁵³

Note that Annan focused on the shift in the focus of the concept of sovereignty from countries to the individual. By expanding to include individual rights and the right of every person to self-determination, the concept of sovereignty has been renewed and gained the support of an increasingly wide range of actors. The traditional concept of sovereignty no longer satisfies the aspirations of the peoples for freedom and stability without domination, oppression or persecution. In addition, Annan acknowledged that the state is responsible for protecting its people and cannot limit itself to maintaining its sovereignty and control.

In fact, Annan's speech contributed to creating international practices that have lessened support of efforts against non-interference and helped establish responsibility for the protection of a country's citizens as an international principle. Therefore, these practices can be implemented when urgently needed to break the principle of non-interference and promote the active international protection of human rights.⁵⁵⁴

3.4.2.1 Report of the International Commission on Intervention and State Sovereignty

In response to these changes, the Canadian government established the International Commission on Intervention and State Sovereignty (ICISS). In 2000, the ICISS issued a report titled 'The Responsibility to protect', which introduced many new concepts and called for a shift from the concept of sovereignty as authority to sovereignty as a responsibility.⁵⁵⁵

⁵⁵³ UNGA 'Secretary-General Presents His Annual Report to General Assembly' (20 September 1999) Press Release SG/SM/7136 <<http://www.un.org/News/Press/docs/1999/19990920.sgsm7136.html>> accessed 28 March 2012.

⁵⁵⁴ James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* Oxford University Press, 2010, p. 136.

⁵⁵⁵ Noha Shawki, Michaelene Cox, *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics*, Ashgate, 2009, p. 81.

This shift makes the state responsible for the protection of its citizens under international monitoring.⁵⁵⁶ The acceptance of this shift in sovereignty means that if the state cannot or does not intend to protect its citizens, the responsibility to do so shifts to the international community.⁵⁵⁷ More specifically, this responsibility is assumed by organs of the UN, particularly the Security Council.

The ICISS attempted to develop a broad concept of international intervention and to formulate a global consensus on how to respond to large, systematic violations of human rights.⁵⁵⁸ Amid the transformations in the concept of sovereignty since the end of the Cold War, it has become accepted that sovereignty imposes a dual responsibility, both internal and external. The external responsibility requires the state to respect the sovereignty of other countries, whereas the internal responsibility requires the state to protect the human rights and respect the dignity of its citizens.

However, reactions to the ICISS report of the Commission have varied, with most support coming from Canada, Europe and some South American countries. Many countries, including India, Russia and some Asian nation, were critical of the report. Before voting on it, these countries stipulated that the report should require the prior approval of the states and demanded a wide representation of the states on the Security Council, which has the power to intervene. At the same time, a range of countries in the Middle East and Asia, along with China, announced their opposition to any restrictions on the concept of sovereignty in favour of human rights.⁵⁵⁹

Despite the criticism and objections from so many countries, Annan announced his approval of the report and urged the adoption of most of the commission's recommendations.⁵⁶⁰ He

⁵⁵⁶ Robert Lancaster, "Intervening Interests: Humanitarian and Pro-Democratic Intervention in the Asia-Pacific", *Australian International Law Journal* (2009) Vol. 16, pp103-131.

⁵⁵⁷ Cristina Badescu, *Humanitarian Intervention and the Responsibility to Protect: Security and Security and Human Rights*, London: Routledge, 2012, pp. 19-44 . Also see Ramcharan Bertrand, *UN Policies and Strategies: Preventing State Failures and Rebuilding Societies*, *Journal of International Law and International Relations* (2005) Vol. 2, No. 1.

⁵⁵⁸ Noha Shawki, Michaelene Cox, *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics*, Ashgate, 2009, p. 83.

⁵⁵⁹ Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit", *Ethics & International Affairs* (2006) Vol. 20, pp 143-169.

⁵⁶⁰ *Ibid.*

expressed his approval of this concept even more clearly during his speech in receipt of the Nobel Peace Prize in 2001, from which the ICISS drew a number of quotations.⁵⁶¹

3.4.2.2 The report of the committee of High-Level Panel on Threats, Challenges, and Change

In 2003, Annan established the High-level Panel on Threats, Challenges and Change to study the dangers to international peace and security.⁵⁶² The committee issued a report entitled 'A More Secure World: Our Shared Responsibility', which the UN approved in 2004.⁵⁶³ The report expresses the following sentiment:

In signing the Charter of the United Nations, States not only benefit from the privileges of sovereignty but also accept its responsibilities. Whatever perceptions may have prevailed when the Westphalia system first gave rise to the notion of State sovereignty, today it clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community. But history teaches us all too clearly that it cannot be assumed that every State will always be able, or willing, to meet its responsibilities to protect its own people and avoid harming its neighbours. And in those circumstances, the principles of collective security mean that some portion of those responsibilities should be taken up by the international community, acting in accordance with the Charter of the United Nations and the Universal Declaration of Human Rights, to help build the necessary capacity or supply the necessary protection, as the case may be.⁵⁶⁴

It is notable that the report used some concepts and ideas from the ICISS report and adapted them to shift sovereignty and the international responsibility to intervene. More importantly, the panel's report supports the emerging principle that a collective international responsibility to protect human rights exists and, furthermore, is to be exercised by organs of the UN,

⁵⁶¹ Walling Carrie, The Responsibility to Protect and the Case of Sudan ,Paper presented at the annual meeting of the MPSA Annual National Conference Chicago,(2008) available at (http://citation.allacademic.com/meta/p_mla_apa_research_citation/2/6/7/7/4/p267745_index.html?phpsesid=s75n83ehl21e5n6hfbmiaik2t2) accessed 03/01/2013.

⁵⁶² United Nations. 'High-Level Panel on Threats, Challenges, and Change' in A More Secure World: Our Shared Responsibility: Report, United Nations Publications, 2004, p. 4.

⁵⁶³ Ibid., pp 36, 68.

⁵⁶⁴ Ibid., p. 17.

particularly the Security Council, under the powers granted by Chapter VII of the UN Charter. Such intervention is especially urgent in response to gross violations of human rights, ethnic cleansing or genocide, and history has proved that, all too often, sovereign governments can be helpless, unable or unwilling to prevent such violations or to resolve them.

3.4.2.3 The principle of responsibility to protect (R2P)

The 2005 World Summit at the UN Headquarters took the same approach, although some objections were presented in the preparatory meetings for the summit. The participating countries divided over support of the fundamental shifts in the principle of sovereignty, particularly regarding the principle of non-interference, and the adoption of the principle of responsibility.⁵⁶⁵ Representatives of some countries proposed that the UN Security Council assume responsibility for the protection of endangered communities, as stipulated in the Secretary-General's report. However, Russia objected to the motion, which had a strong influence as the country is a permanent member of the Security Council and has veto power. In addition, some Latin American countries intervened during the discussions to vote on some paragraphs.⁵⁶⁶

However, in response to the suggestions of the World Summit, the General Assembly adopted the principle of responsibility through an amendment to the resolutions of the summit. This amendment admits the resolution was not as expected and does not abide by the conditions laid down by the ICISS Commission, such as the requirement for Security Council members to not use their veto on issues that require international responsibility. In addition, the amendment weakens the protection of human rights violations.⁵⁶⁷

The most positive aspect of the summit came in its final report. Interestingly, the report clearly emphasised respect for human rights as a fundamental principle in international relations and the responsibility of member states to protect their citizens from genocide, war crimes, ethnic cleansing and crimes against humanity. In addition, the report stipulates that

⁵⁶⁵ Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit", *Ethics & International Affairs* (2006) Vol. 20, pp 143–169.

⁵⁶⁶ Alex J. Bellamy, "Realizing the Responsibility to Protect", *International Studies Perspective* (2009) Vol. 10, pp 111–128 ; see also A. J. Bellamy, *Responsibility to Protect*, Polity, 2009, p. 95.

⁵⁶⁷ Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit", *Ethics & International Affairs* (2006) Vol. 20, pp 143–169.

the UN should bear the final responsibility to protect communities through collective action by the organisation's members.⁵⁶⁸

However, the report retreated from mandating the use of force by stating that the Security Council should examine each case individually to determine (the possibility of genocide or ethnic cleansing. In the cases considered by the Security Council, the role of the principle of collective responsibility for protection was restricted, and the right to object or change the text of resolutions was given to any country, particularly the permanent members of the Security Council.⁵⁶⁹

Despite this weakening of the principle of collective responsibility, the summit participants did sign a pledge referencing it. Item 138 states that 'we accept that responsibility and will act in accordance with it'. In addition, item 139 includes a clear and explicit pledge by the international community, through the UN, to accept the responsibility to use all possible diplomatic and humanitarian means to protect each country's peoples from the four agreed-upon crimes.⁵⁷⁰

After the Word Summit recognised this conceptual shift, the principle of the responsibility to protect appeared in a draft resolution on the protection of civilians in armed conflicts submitted by Britain to the Security Council. After a delay of more than a month because of a split within the UN Security Council, it issued resolution No. 1674 (2006).⁵⁷¹ Paragraph 4 of this resolution includes a statement on the principle of the responsibility to protect populations from crimes, ethnic cleansing and genocide and crimes against humanity.⁵⁷² However, Russia declared that it was premature to adopt the principle of the responsibility to protect in the documents of the Security Council. Furthermore, the Russian delegate asked to add a clause confirming the Security Council's commitment to respect the political independence, sovereign equality and territorial integrity of all states. However, this objection

⁵⁶⁸ UN, General Assembly, Resolution No. A/RES/60/1 (October 2005).

⁵⁶⁹ Ibid.

⁵⁷⁰ World Federalist Movement, 'Learn About the International Coalition for the Responsibility to Protect' (International Coalition for the Responsibility to Protect 2005) para 138–139 <<http://www.responsibilitytoprotect.org/index.php/about-coalition>>.

⁵⁷¹ Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit", *Ethics & International Affairs* (2006) Vol. 20, pp 143–169.

⁵⁷² UN, Security Council, Resolution No. 1674 (April 2006).

did not actually pose a barrier to recognising the principle of responsibility for the protection as stipulated in the resolution.⁵⁷³

Subsequently, the Security Council adopted the principle of the responsibility to protect in order to address the situation in Darfur and then, given the situation in Sudan, confirmed this principle in legal form in resolution No. 1706 (2006). That resolution authorised the Security Council to establish a UN-affiliated peacekeeping force to carry out its duties to maintain security and peace. The resolution pointed to the responsibility of every member of the UN to protect its citizens, in addition to the responsibility of the international community to provide protection if the state failed to do so on its own.⁵⁷⁴

In any case, the acceptance of the principle of responsibility for protection does not depend upon these international practises, as it originates from fundamental changes focused on the necessity to protect human rights. The establishment of criminal responsibility for and international courts to prosecute crimes against humanity have played an active role as well. Those courts have deliberated how to apply basic individual criminal responsibility and how best to secure international peace and security through the deterrence of violence and human rights violations within the borders of a country. Thus has arisen the necessity for those courts to be able to intervene in matters fall within the domestic jurisdiction of states. All of these capabilities are in addition to the practises of international intervention that are possible with or without the consent of the Security Council.

3.4.2.4 The impact of international criminal tribunals on the principle of non-interference

Undoubtedly, it is through the support of the Universal Declaration of Human Rights, which directly challenges the principle of non-interference in particular and traditional principles of sovereignty in general, that the individual now enjoys private and public legal rights. On the international level, the international community's embrace of the International Criminal

⁵⁷³ Alex J. Bellamy, "Realizing the Responsibility to Protect", *International Studies Perspective* (2009) Vol. 10, pp. 111–128.

⁵⁷⁴ UN, Security Council, Resolution No. 1706 (August 2006).

Court (ICC) actively pursues the protection of human rights through individual criminal liability.⁵⁷⁵

Individual human rights have become of interest to international law since the emergence of the principle of international responsibility for international crimes, so the perpetrators of or decision-makers in such crimes can no longer act with impunity protected by principle of non-interference. The freedom of the state to abuse its citizens within its territory under the cover of absolute sovereignty and non-interference in countries' internal affairs has been nullified. So has the argument that an abuser is justified by either representing the state or merely obeys its orders. Human rights have become a key issue in international law and are no longer restricted to domestic law.⁵⁷⁶

The Nuremberg and Tokyo tribunals marked the starting of the application of the concept of international criminal responsibility, with the purpose to punish individuals who have committed international crimes against humanity or war crimes through an international court. These courts have played an active role in the development of international criminal responsibility, as shaped through numerous resolutions and international instruments.⁵⁷⁷ For example, the International Law Commission considered the verdicts handed down by these courts to lay out key principles, including the recognition of individual criminal responsibility at the international level.⁵⁷⁸

The courts rejected the objection that international law governs the acts of only sovereign states and has no power to punish individuals who committed crimes as representatives of the state. In response to these allegations, the courts also asserted that international law imposes duties and responsibilities on both the states and individuals.⁵⁷⁹

⁵⁷⁵ Manisuli Senyonjo, Mashood A. Baderin, *International Human Rights Law: Six Decades after the UDHR and Beyond*, Ashgate Publishing, 2010, pp 23–27.

⁵⁷⁶ Francisco Forrest Martin, Stephen J. Schnably, Richard Wilson, Jonathan Simon, Mark Tushnet, *International Human Rights and Humanitarian Law: Treaties, Cases, and Analysis*, Cambridge University Press, 2006, pp 133–134.

⁵⁷⁷ Kirsten Sellars, "Imperfect Justice at Nuremberg and Tokyo", *European Journal of International Law* (2010) Vol. 21, pp. 1085–1102.

⁵⁷⁸ Douglas Hodgson, *Individual Duty within a Human Rights Discourse*, Ashgate Publishing, 2003, p. 69.

⁵⁷⁹ Machteld Boot, *Genocide, Crimes against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court*, Oxford: Intersentia, 2002, p. 199.

Additionally, the UN Security Council has created numerous international courts to prosecute crimes of genocide, crimes against humanity and war crimes. Specifically, the Council has established, for a limited time and a specific dispute, the International Court for the former Yugoslavia (resolution No. 827),⁵⁸⁰ International Criminal Tribunal for Rwanda (resolution No. 955),⁵⁸¹ Special Court for Sierra Leone (resolution No. 1315)⁵⁸² and Special Tribunal for Lebanon (resolution No. 1757).⁵⁸³

By applying specific adaptations of the principle of international responsibility to the prosecution of the crimes in these cases, these courts have virtually broken the principle of non-interference. The inability of those countries to carry out their obligations to their own people created the necessity for the international community to shoulder the responsibility to protect individuals and punish both the perpetrators of offenses against other citizens and state decision-makers. These courts were formed independently of the countries' internal judicial systems, traditionally the domestic jurisdiction of the state. Thus, these international courts rank higher than the national courts, which represent the judicial power of the state.

In addition, the global judicial authorities have aided in enshrining these definitions of responsibility by giving permission to some national courts to try those suspected of acts considered international crimes, regardless of where they were committed or of the perpetrators' nationality.⁵⁸⁴ For example, the Belgian judiciary indicted Israeli Defence Minister Ariel Sharon for the Sabra and Shatila massacres.⁵⁸⁵

As Karinne Coombes said, universal jurisdiction aims to end the era of impunity for perpetrators of serious crimes.⁵⁸⁶ However, universal jurisdiction faces challenges in the domain of international law, particularly with regard to international practice,⁵⁸⁷ because it

⁵⁸⁰ UN, Security Council, Resolution No. 827 (May 1993).

⁵⁸¹ UN, Security Council, Resolution No. 955 (November 1994).

⁵⁸² UN, The Security Council, Resolution No. 1315 (August 2000).

⁵⁸³ UN, Security Council, Resolution No. 1757 (May 2007).

⁵⁸⁴ Wuerth Ingrid, *International Law in Domestic Courts and the Jurisdictional Immunities of the State Case*, Melbourne Journal of International Law (2012) Vol. 13, No. 2.

⁵⁸⁵ Antonio Cassese, Guido Acquaviva, Mary Fan, Alex Whiting, *International Criminal Law: Cases and Commentary*, Oxford University Press, 2011, p. 92.

⁵⁸⁶ Karinne Coombes, *Universal Jurisdiction: A Means to End Impunity or a Threat to Friendly International Relations?* The George Washington International Law Review (2011) Vol. 43, No. 3.

⁵⁸⁷ Hakan Friman, Darryl Robinson, *An Introduction to International Criminal Law and Procedure*, Cambridge University Press, 2010, pp. 50-51.

gains its strength from international customary law.⁵⁸⁸ This is supported by decision No. 121 (2000) of the International Court of Justice regarding the arrest warrant issued by a Belgian judiciary against the Foreign Minister of the Democratic Republic of Congo, Abdoulaye Yerodia Ndombasi,⁵⁸⁹ who was accused of inciting racial hatred against the Tutsi ethnic group and crimes against humanity.⁵⁹⁰ The Court, in its decision regarding this warrant, violated the principle of diplomatic immunity.⁵⁹¹

In the same context, we find that the reaction of the African Union towards the French arrest warrant for nine Rwandan officials, including Rwandan President Paul Kagame, was violent and unwelcoming.⁵⁹² The African Union stated that the warrant violated territorial sovereignty and that the action was political in nature and abused universal jurisdiction. The practice of universal jurisdiction does not depend on such restrictions; instead, it extends to the difficulty in determining the international jurisdiction of national courts.⁵⁹³ Anthony Colangelo considers that the national jurisdiction for international crimes is unclear, because jurisdiction has an international dimension that collides with the principles inherent in international law, including those of territorial sovereignty and political and diplomatic immunity.⁵⁹⁴

However, universal jurisdiction constitutes an important development in international law⁵⁹⁵ and contributes, along with other international courts, to eliminating safe corridors for the perpetrators of international crimes whenever there is international consensus or agreement

⁵⁸⁸ David Turns, Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo V. Belgium): The International Court of Justice's Failure to Take a Stand on Universal Jurisdiction, *Melbourne Journal of International Law* (2002) Vol. 3, No. 2.

⁵⁸⁹ Arrest Warrant (Democratic Republic of the Congo V. Belgium) case, ICJ judgment, 17 October 2000, available at (<http://www.icj-cij.org/docket/files/121/7081.pdf>) accessed 21/08/2014.

⁵⁹⁰ Ibid

⁵⁹¹ Ibid

⁵⁹² African Union, Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction, No.199, July 2008, available at (http://www.au.int/en/sites/default/files/ASSEMBLY_EN_30_JUNE_1_JULY_2008_AUC_ELEVENTH_ORDINARY_SESSION_DECISIONS_DECLARATIONS_%20TRIBUTE_RESOLUTION.pdf) accessed 21/08/2014.

⁵⁹³ Mitsue Inazumi, Universal Jurisdiction in Modern International Law: Expansion of National Jurisdiction for Prosecuting Serious Crimes Under International Law, *Intersentia*, 2005, p 210.

⁵⁹⁴ Anthony Colangelo, The New Universal Jurisdiction: In Absentia Signaling over Clearly Defined Crimes, *Georgetown Journal of International Law* (2005) Vol. 36, No. 2.

⁵⁹⁵ Lee K Boyd, Universal Jurisdiction and Structural Reasonableness, *Texas International Law Journal* (2004) Vol. 40, No. 1.

regarding jurisdiction.⁵⁹⁶ If some of the perpetrators of these crimes have diplomatic immunity, such immunity may be rescinded with the passage of time, or may otherwise be cancelled—either by the state to which the offender belongs or by international decision.⁵⁹⁷

This development does not end with Special Criminal Courts or persistent attempts within the scope of universal jurisdiction, but rather it represents a fundamental shift in the development of international criminal tribunals, catalysed by the establishment of a permanent ICC, which demonstrates the effectiveness of the principle of criminal responsibility. This court is the most prominent achievement in the application of individual criminal responsibility at the international level.⁵⁹⁸ Founded in 2002, the ICC is a permanent international court capable of trying individuals accused of war crimes, crimes of aggression, genocide and crimes against humanity.⁵⁹⁹

It is important to point out that one of the most important principles underlying the court is expressed in the Rome Statute, which seeks to preserve sovereignty through the principle of complementarity. According to Article 17 of the ICC's statute, the court completes the work of local judicial organs. The court also may not initiate judicial proceedings unless the local judicial organs have expressed a desire to refer the issue to the ICC or could not investigate or prosecute those issues. This principle aims to strengthen local courts by giving the court narrow authority in cases where the state could not or did not desire to fulfil its responsibility. If the goal is to maintain the sovereignty, this statute allows local courts to refer cases to the ICC and play an active role in prosecuting criminals within the state's borders.⁶⁰⁰

Moreover, Article 13 of the Rome Statute, and paragraph (B) in particular, grants the Security Council broad authority to refer any issue to the ICC. Therefore, the court's jurisdiction falls according to assignment by the Security Council, as paragraph (B) states: 'The Court may

⁵⁹⁶ Karinne Coombes, *Universal Jurisdiction: A Means to End Impunity or a Threat to Friendly International Relations?* *The George Washington International Law Review* (2011) Vol. 43, No. 3.

⁵⁹⁷ Kenneth Kaoma Mwenda, *Public International Law and the Regulation of Diplomatic Immunity in the Fight Against Corruption*, Pretoria University Law Press, 2011, pp 49-52. Also see David Turns, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo V. Belgium): The International Court of Justice's Failure to Take a Stand on Universal Jurisdiction*, *Melbourne Journal of International Law* (2002) Vol. 3, No. 2.

⁵⁹⁸ Shane Darcy, Joseph Powderly, *Judicial Creativity at the International Criminal Tribunals*, Oxford University Press, 2010, p. 2.

⁵⁹⁹ *Ibid.*

⁶⁰⁰ Mauro Politi, Federica Gioia, *International Criminal Court and National Jurisdictions*, Ashgate Publishing, 2008, pp 63–66.

exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if..... a situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations....’⁶⁰¹ For example, UN Security Council resolution No. 1593 (2005) appointed a judge to refer human rights violations in Darfur to the ICC.⁶⁰²

3.4.2.5 Security Council resolutions authorising international intervention

In the system of collective security established by the UN Charter, the Security Council is the main driver of and, in this context, fulfils the international responsibility to achieve global peace and security.⁶⁰³ In addition, according to Article 39, the Council has the jurisdiction to assess cases and international issues to determine if they pose a threat to international peace and security. According to Article 24, there is a fundamental limitation on the practices of the Security Council: Its work must be in accordance with the purposes and principles of the UN. However, one of the UN’s main purposes is to maintain global peace and security, and therefore, it may take actions to ensure the protection of human rights. This obligation is more explicit in Article 1 of the Charter, which identifies the organisation’s purposes and principles of the Organisation and, in the third paragraph, specifies the need to promote respect for human rights.⁶⁰⁴

Through deliberation and decisions, the Security Council has dealt with many cases of human rights violations and discussed numerous issues involving international intervention.⁶⁰⁵ For example, resolution No. 2014 (2005) condemns violations of human rights in Yemen,⁶⁰⁶ and resolution No. 1906 violations in the Republic of the Congo.⁶⁰⁷ In all these cases, the Security

⁶⁰¹ Rome Statute of the International Criminal Court (1998).

⁶⁰² The Security Council Resolution No. 1593 (March 2005).

⁶⁰³ Niels Blokker, “Is the authorization authorized? Powers and practice of the UN Security Council to authorize the use of force by ‘coalitions of the able and willing’”. *European Journal of International Law* (2000) Vol. 11, pp. 541–568.

⁶⁰⁴ UN Charter (1945).

⁶⁰⁵ Ved Nanda, “The Global Challenge of Protecting Human Rights: Promising New Developments”, *Denver Journal of International Law and Policy* (2006) Vol. 34, No. 1.

⁶⁰⁶ UN, Security Council, Resolution No. 2014 (October 2011).

⁶⁰⁷ UN, Security Council, Resolution No. 1906 (December 2009).

Council considered the means available to preserve human rights, especially international intervention measures in the event that the crisis worsened.

In other cases, acting under Chapter VII, the Security Council has authorised military intervention to protect human rights and stop the deterioration of humanitarian situations, as in Somalia, Rwanda and the former Yugoslavia. In the case of Somalia, the council convened an emergency meeting to study the seriously worsening humanitarian situation and issued resolution No. 733 (1992), banning the sale or delivery of any military weapon for the warring parties.⁶⁰⁸ Next, the Council issued resolution No. 751 (1992) requesting the Secretary-General to send a UN military unit to monitor the cease-fire.⁶⁰⁹

Despite these efforts to prevent further violence, the Council was compelled to take the important step of military intervention. It did so through resolution No. 794 (1992), which authorised the US-led allied forces to use all necessary means to provide humanitarian assistance and protect the lives of thousands of Somalis. Based on this decision, US troops entered Somalia to implement the resolution.⁶¹⁰ Clearly, this was a legal action, as resolution No. 794 authorised UN troops to intervene in Somalia and permitted the use of all necessary means, justified by the deteriorating humanitarian situation and grave breaches of the rules of international humanitarian law.⁶¹¹

The Security Council followed the same pattern of intervention in Rwanda, unanimously adopting resolution No. 872 (1993) establishing the UN mission to provide humanitarian assistance to that country.⁶¹² However, genocide and human rights violations continued, which forced the UN Security Council to take further measures. Following a French proposal, the council passed resolution No. 929 (1994), which authorised the establishment of a multinational force to provide security and protection for displaced people, refugees and all those at risk in Rwanda.⁶¹³

⁶⁰⁸ UN, Security Council, Resolution No. 733 (January 1992).

⁶⁰⁹ UN, Security Council, Resolution No. 751 (April 1992).

⁶¹⁰ UN, Security Council, Resolution No. 794 (December 1992) .

⁶¹¹ Peter Hilpold, "Humanitarian Intervention: Is There a Need for a Legal Reappraisal", *European Journal of International Law* (2001) Vol. 12, pp. 437–468.

⁶¹² UN, Security Council, Resolution No. 872 (October 1993).

⁶¹³ Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford University Press, 2002, p. 232; see also Security Council Resolution No. 929 (June 1994).

In the case of the former Yugoslavia, the council issued resolution No. 770 (1992) allowing any members of the international community to take all measures to provide humanitarian aid and protection.⁶¹⁴ In addition, Security Council resolution No. 824 (1993) designated six cities in Bosnia and Herzegovina, including Sarajevo, as safe areas protected by UN troops against military attacks and other hostilities.⁶¹⁵ Resolution No. 836 (1993) also gave UN troops the right to respond militarily against attacks on those safe areas.⁶¹⁶ In many other cases, the Security Council has cited Chapter VII of its charter to authorise interventions for humanitarian purposes, such as resolution No. 797 (1992) regarding Mozambique⁶¹⁷ and resolution No. 688 (1991) concerning Iraqi Kurdistan.⁶¹⁸

Moreover, to put pressure on conflicting parties or those violating their citizens' human rights, the Security Council has in several cases imposed economic sanctions on offending countries. For example, Resolution No. 757 (1992) imposed multiple sanctions on the Yugoslav government⁶¹⁹ and prohibited the importation of many goods. In addition, resolution No. 1970 (2011) put economic sanctions on Libya,⁶²⁰ and resolution No. 2048 (2012) sanctions on the Guinea-Bissau government after a coup.⁶²¹

3.5 Conclusion

In conclusion, it is clear that the principle of non-interference faces stiff winds because of the need to protect human rights and the international community's responsibility to provide such protection. The international community has taken many steps that have weakened the traditional manifestations of sovereignty, especially the principle of non-interference. In addition, many organisations have adopted a number of international resolutions and policies that have furthered the on-going transformation of the principle of non-interference. However, these practices and decisions have not led to the collapse of the concept of non-

⁶¹⁴ UN, Security Council, Resolution No. 770, (August 1992).

⁶¹⁵ UN, Security Council, Resolution No. 824 (May 1993).

⁶¹⁶ Terry Gill, Dieter Fleck, *The Handbook of the International Law of Military Operations*, Oxford University Press, 2010, p. 175-176 ; see also Security Council Resolution No. 836 (June 1993).

⁶¹⁷ UN, Security Council, Resolution No. 797, (December 1992).

⁶¹⁸ UN, Security Council, Resolution No. 688 (April 1991).

⁶¹⁹ Erika De Wet, André Nollkaemper, Petra Dijkstra, *Review of the Security Council by Member States*, Intersentia nv, 2003, p. 48; see also Security Council Resolution No. 757 (May 1992).

⁶²⁰ UN, Security Council, Resolution No. 1970 (February 2011).

⁶²¹ UN, Security Council Resolution No. 2048 (May 2012).

interference but, rather, to the identification of exceptional circumstances, such as violation of human rights, in which this principle may be broken. Thus, we can say that staunch support of the principle of non-interference has given way to some flexibility and that the basic conditions for this change have been met, in particular establishing the principle of international responsibility for protecting human rights.

However, this conflict over the principle of non-interference also extends to support for the rights recognised by the international community, especially the right to self-determination. Thus, these changes have helped establish the duty to intervene when humans are exposed to the real danger of being killed, displaced or tortured. Unarguably, the belief that the right of political self-determination is one of the most important human rights has been produced by modern legal and political thought formed through many of the practices and international resolutions relevant to this right. The next chapter will examine the legal dimension of international interventions to promote the right of political self-determination. Specifically, the political and legal norms of international jurisprudence concerning this right and the legal basis for such interventions will be analysed. The most prominent legal obstacles to legitimising this kind of international intervention will also be discussed.

Chapter Four

The legal concept of international intervention to promote the right of political self-determination

4.1 Introduction

This chapter presents a critical analysis of the concept of international interventions to promote the right of political self-determination and the legal basis for such interventions, whether in rules or jurisprudence. As well, this chapter explores the legal obstacles to their legitimisation. In the previous chapter, we described the bending of indicators of states' sovereignty, particularly the principle of non-interference, and explained how this legal principle has become more flexible in conformance to modern legal trends that prioritise the protection and support of human rights. It is important to undertake a deep analysis of the extent to which legal interventions to promote the right of political self-determination are in line with these trends. In particular, we consider the contemporary interest in the right of political self-determination as expressed in the rules of international law and jurisprudence.

4.2 Meaning of international intervention to support the right of political self-determination

Providing a specific legal definition of international intervention to promote the right to political self-determination is challenging because of the need to consider both legal and political issues. Any confusion between law and politics inevitably complicates the development of a clear legal formula. Discrepancies can also arise between the legal rules in force, such as Article 2(7) of the UN Charter,⁶²² and the objectives of the international community, such as support for democracy.⁶²³ The concerned parties, whether states or international organisations, might also have different views on the appropriate mechanisms for such interventions. However, it should be possible to formulate a definition of

⁶²² Elizabeth Chadwick, *Self-Determination in the Post-9/11 Era*, Routledge, 2011, p.8

⁶²³ Milena Sterio, *The Right to Self-determination Under International Law: "selfistans", Secession and the Rule of the Great Powers*, Routledge, 2013, p.13

international intervention that supports the right of political self-determination. The creation of such a formula contributes to the development of greater attention to human rights, including the right of political self-determination and its defence.

It is essential to differentiate between international intervention to protect human rights and international intervention to support or promote the right of political self-determination. However, both interventions seek to uphold the dignity of human rights and share an interdependence and interrelatedness in the goals, actions and style of intervention.⁶²⁴ International jurisprudence has tended to focus on the study of unilateral intervention for the protection of basic human rights, such as in cases of murder, persecution, torture, and displacement, rather than upon interventions to foster political self-determination. This tendency has emerged despite the argument that an environment of democratic politics and popular political options could contribute to the elimination of human rights violations. However, it should be noted that steps have been taken to enable international intervention in support of the political right to self-determination. For example, Security Council resolution No. 940 sought to support democracy in Haiti by restoring a constitutional government after the military coup led by Raoul Cedras.⁶²⁵ Other examples include the US prosecution for the invasion of Panama in 1989⁶²⁶ and the economic sanctions imposed on South Africa during the apartheid era.⁶²⁷

International interventions for the protection of human rights can be broadly classified into two types: apparent intervention, which focuses directly on protecting human rights, and hidden intervention, which works towards the same aim by promoting political self-determination. Example of both kinds of intervention occurred in Kosovo in 1999, when the international community interceded to protect ethnic Albanians from genocide and atrocities committed by the Serbs. It can be argued that the right to self-determination played a pivotal role in the outbreak of the crisis. This is evidenced by the events that occurred in Kosovo after the 1989 declaration by Slobodan Milosevic abolishing the autonomy of Kosovo

⁶²⁴ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Ottawa : International Development Research Centre, 2001, p375.

⁶²⁵ UN, Security Council, Resolution No. 940 (July 1994).

⁶²⁶ David Wippman, *Defending Democracy through Foreign Intervention*, *Houston Journal of International Law* (2007) Vol. 19, pp 121-139.

⁶²⁷ Steven Lee, *Intervention, Terrorism, and Torture: Contemporary Challenges to Just War Theory*, Springer, 2007, p87.

Albanians.⁶²⁸ In 1991, the people of Kosovo held a referendum which expressed a majority desire to secede from Serbia and establish an independent republic.⁶²⁹ The Serbian government refused to recognise the wishes of the people of Kosovo, resulting in armed clashes that led to violations of international human rights. The international community launched a programme of military intervention to protect human rights, particularly with regards to murder, persecution, and torture.⁶³⁰ While this is an apparent intervention, a hidden intervention was also achieved through the promote the self-determination of the people of Kosovo.⁶³¹

Another example of these interventions can be seen in the security Council resolution No.1973 (2011) regarding Libya. The resolution took on an apparent form—to protect civilians from attacks by the forces of Muammar al-Gaddafi⁶³²—contributed to a hidden international intervention to change the regime in Libya. This eventually culminated in the current situation in Libya: a trend towards democracy and international recognition of the Libyan Transitional Council.⁶³³ Similarly, the results of the US invasion of Iraq in 2003, on the pretext that Iraq possessed weapons of mass destruction that could threaten international security, contributed to ending the 24-year regime of Iraqi President Saddam Hussein. This resulted in the creation of a democratic environment for the Iraqi people,⁶³⁴ culminating in the drafting of a new democratic constitution in 2005.⁶³⁵

These examples have illustrated the two types of international intervention to support the right of political self-determination: apparent interventions, as that in Haiti, and hidden interventions, so called because they overlap with international interventions to protect human rights, as in Kosovo and Libya.

⁶²⁸ Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned*, Oxford University Press, 2000, p41.

⁶²⁹ *Ibid*, p44.

⁶³⁰ *Ibid*, pp 48-98.

⁶³¹ Anna Di Lellio, *The Case for Kosova: Passage to Independence*, London : Anthem, 2006, p110

⁶³² UN, Security Council Resolution No. 1973 (March 2011).

⁶³³ Aiden Corkery, 'Gilmore Hails End of Tyrant's 42-Year Reign as Rebels Take Libya's Capital' *Daily Mail* (London, 23 August 2011).

⁶³⁴ Ibrahim Elbadawi, Samir A. Makdisi, *Democracy in the Arab World: Explaining the Deficit*, Routledge, 2011, p316.

⁶³⁵ Stephen Townley, *Mosque and State in Iraq's New Constitution*, *Denver Journal of International Law and Policy* (2006) Vol. 34, pp. 197-246.

Other scholars of international law want to divide international interventions for the protection of human rights into a narrow and a broad category.⁶³⁶ This division is premised upon the close relationship between the formal and substantive objectives and procedures of international interventions to promote political self-determination and to protect human rights. Therefore, examining both categories is required to ensure the protection of these rights.⁶³⁷

The broad category of international intervention includes all measures taken by the international community to prevent or stop the violation of human rights. These measures are organised within the legal framework provided in the UN Charter and regional conventions. Intervention can take the form of diplomatic pressure and economic sanctions, up to and including the use of armed force.⁶³⁸ The narrow category of international intervention is focused upon the use of armed force, including restrictions on its use and the threat of its use. Acceptance of this division requires consideration of whether non-violent actions in support of self-determination should be considered interference in the political and legal sense. This would permit viewing non-violent intervention as falling outside the scope of intervention, along with measures agreed upon by the UN Security Council.⁶³⁹ In this sense, it can be argued that military actions are a faster and more effective means of protecting human rights.

Jamnejad and Wood have noted the close relationship between the principle of non-interference and the rules of international law on the use of force. Thus, intervention remains associated with the use of force in jurisprudence and the legal literature. This association might be why many forms of interference involve the military, as in Kosovo or Haiti.⁶⁴⁰ However, international intervention to support the right of political self-determination generally draws upon the broader sense of international intervention, representing a modern

⁶³⁶ Stefan Kirchner, *Human Rights and International Security: Humanitarian Intervention and International Law*, GRIN Verlag, 2008, p39; see also Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania State University Press, 2002, p335; see also Samuel Totten, *The Prevention and Intervention of Genocide: An Annotated Bibliography*, Routledge, 2007, 747; see also Ralph Zacklin, *Beyond Kosovo: the United Nations and humanitarian intervention*, *Virginia Journal of International Law* (2001) Vol. 41, pp 924-939.

⁶³⁷ International Commission on Intervention and State Sovereignty, *International, The Responsibility to Protect*, Ottawa : International Development Research Centre, 2001, p145.

⁶³⁸ Sarah Graham Brown, *Sanctioning Saddam: The Politics of Intervention in Iraq*, B.Tauris, 1999, P12.

⁶³⁹ Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, Kluwer Law International, 1999, p18.

⁶⁴⁰ Maziar Jamnejad, Michael Wood, *The Principle of Non-intervention*, *Leiden Journal of International Law*, (2009) Vol. 22, Issue 02 .

trend to renounce violence. The right of political self-determination is an intrinsic part of the legal principles that govern the post-World War II world,⁶⁴¹ which prohibit the use of force in international relations.⁶⁴² Democracy arguably is a manifestation of the right to political self-determination, creating security and stability for the people. Thus, the right of political self-determination contradicts the narrow definition that limits intervention to the use of armed force, unless the claim for self-determination has been met by human rights abuses such as displacement, murder and torture or by the use of legal proceedings and other economic sanctions.

The broad definition of international intervention supporting the right of political self-determination can be implemented in several ways.

1. Narrowly interpreting international intervention supports the traditional stages of international relations that permit the use of force. However, this interpretation does not accord with international law's increasing emphasis on the avoidance of force in international relations. The UN Charter prohibits the use of force except in the case of legitimate defence, as provided for in Article 51,⁶⁴³ or in the case of collective enforcement measures authorised by the Security Council, following Chapter VII.⁶⁴⁴ Support for the right to political self-determination reaches this point only in exceptional cases in which the government brutally represses a people's popular, peaceful claim. There is evidence to suggest that the international community should support these demands peacefully, as the international resolutions and recommendations supporting the right to peaceful self-determination often lead the state and the international community to meet the wishes of the people to achieve this right.
2. The trend towards a broad interpretation of intervention is consistent with contemporary international relations as economic, energy, transportation and media developments have increased the interdependence of countries. Thus, no state can live

⁶⁴¹ Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession With Formulations of Post-Colonial National Identity*, Martinus Nijhoff Publishers, 2000, p260

⁶⁴² Simon Chesterman, *Just War Or Just Peace?: Humanitarian Intervention and International Law*, Oxford University Press, 2002 pp45-48.

⁶⁴³ UN Charter (1945) Article 51.

⁶⁴⁴ UN Charter (1945) Chapter VII.

in isolation from the international community,⁶⁴⁵ which could increase the political turmoil within states. These circumstances suggest that intervention through political or economic pressure could be an effective means to compel a country to end its objection to the popular desire for political self-determination.

3. The broad interpretation of the concept of interference includes the principle of non-interference in the internal affairs of states. This is in line with international laws and resolutions issued by international organisations, especially the UN. The gradient in the use of international procedures therefore contributes to the tension between the principle of non-interference and support for the right of political self-determination. This helps to create an environment that supports the right to self-determination by not resorting to direct intervention in the internal affairs of states. Instead, states are given adequate opportunities to correct their positions until they comply with the modern international position, which supports the right of political self-determination.

Therefore, we can link the broad category of international intervention to support of the right of political self-determination, in contrast to the narrow category, which does not comply with modern global thought which no longer favours resorting to force.⁶⁴⁶

It is therefore possible to define international intervention as being in support of the right of political self-determination. Such interventions range from granting asylum to imposing political and economic pressure on a state that refuses to grant self-determination to its people. On the other hand, limiting this definition to military intervention means that intervention may include the use of armed force when another state suppresses its people's desires in violation of international law on human rights. However, this definition was not intended to include interventions to change regimes or dictatorships, nor to be the permanent formula in traditional international law.

⁶⁴⁵ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, 2003, p77.

⁶⁴⁶ The use or threat of armed force is no longer acceptable outside the international law arising from international or regional conventions. At the same time, there is interest in the protection of human rights. However, in dealing with violations of those rights, it is better to employ political and economic deterrents before resorting to military force, as military action will result in loss of life, irrespective of its effectiveness.

There is no doubt that the legal personality of a state is an important factor in the actions of other states aimed at weakening that personality. International figures might join together to form international organisations and regional federations.⁶⁴⁷ These entities play a pivotal role in contemporary international relations, contributing to either strengthening or weakening the personality of states. For example, Article 30 of the Constitutive Act of the AU forbids memberships to countries that violate their political constitution and replace ruling regimes by force.⁶⁴⁸

This definition also reveals an overlap between international interventions to support the right of political self-determination and to protect human rights.⁶⁴⁹ An intervention to promote this right might take place before a government has applied excessive force against its citizens making such demands. However, as soon as the state begins using excessive force, it violates international human rights, and the intervention therefore shifts into the protection of these rights.⁶⁵⁰ As mentioned, however, the hidden motive of this intervention might still be to support the right of political self-determination.

Although the right to political self-determination clearly is less important than universal human rights, this right and the need to encourage the growth of democracy are increasingly regarded as essential to fostering stability and peace,⁶⁵¹ as stated in Article 21 of the Universal Declaration of Human Rights.⁶⁵² It is important to differentiate between the severity of damage inflicted by the types of intervention and by political and economic sanctions. As well, it must also be understood that intervention, in whatever form, has only

⁶⁴⁷ Brendan Edgeworth, *Law, Modernity, Postmodernity: Legal Change in the Contracting State*, Ashgate Publishing, 2003, 194; see also Hans Corell, *Sovereignty and Humanity: Reality and Possibility*, *Denver Journal of International Law and Policy* (2006) Vol. 36, No. 1 ; see also Daniel Drezner, *On the Balance between International Law and Democratic Sovereignty*, *Chicago Journal of International Law* (2008) Vol. 2.

⁶⁴⁸ Constitutive Act of the African Union (2000) (AU Constitutive Act) art 30 <http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm>, accessed 12 June 2012.

⁶⁴⁹ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, 2003, p. 21.

⁶⁵⁰ The right to political self-determination both is an integral part of human rights and extends beyond it. Therefore, the environment in which these rights are achieved provides an appropriate framework for the provision of basic human rights. This enables the formation of a civilised society that cares about human rights and freedoms and of safeguards for the protection of individuals' rights, groups and freedoms.

⁶⁵¹ Simone van den Driest, 'Pro-Democratic' Intervention and the Right to Political Self-Determination: The Case of Operation Iraqi Freedom, *Netherlands International Law Review* (2010) Vol. 57, pp. 29–72.

⁶⁵² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) (UDHR) art 21 <<http://www.un.org/en/documents/udhr/index.shtml>> accessed 10 June 2011.

one goal—the betterment of individual human lives—which includes the right to self-determination as an important, basic human right.

In light of these considerations, the rights and freedoms outlined in international conventions deserve to be protected effectively by the international community. However, determining the appropriate intervention mechanism requires a distinction to be drawn between human rights and the magnitude of potential damage. As the right of political self-determination is linked to the pursuit of international peace and security, it therefore is important to reject violence and achieve the empowerment of peoples through peaceful measures that put pressure on the state.

4.3 Legal basis for international interventions to promote the right of political self-determination

As discussed in the first chapter, with the global trend towards democracy, the international community increasingly recognises the importance of individual human rights and freedoms and accepts them as basic principles of contemporary international law. It can even be said that these rights have become a common heritage of mankind.⁶⁵³ Consequently, countries commit to respecting these rights, irrespective of political borders. This commitment has found its basis in a wide range of international conventions that oblige member states to respect human rights and general freedoms, most notably the UN Charter. As stated in the preamble to the Charter, We, the Peoples of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small'.⁶⁵⁴

The UN has also contributed to and adopted numerous resolutions that encourage the spread of freedom and democracy. In addition, the UN has established many programmes aimed at supporting democracy, such as the UN Development Programme.⁶⁵⁵ These interests are not

⁶⁵³ Johannes van Aggelen, The Preamble of the United Nations Declaration of Human Rights, *Denver Journal of International Law and Policy* (2000) Vol. 28, No. 2.

⁶⁵⁴ UN Charter (1945)

⁶⁵⁵ UN Development Programme, 'Democratic Governance' (UNDP)

<<http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/overview.html>> accessed 12 May 2012.

constrained within certain borders or specific geographical areas but extend to all the people of the earth.

The first chapter of this dissertation discussed the universality of the right of self-determination, access to this right and the on-going campaign to establish democracy as a right in international law. Related to these developments, it should be noted that contemporary international law support the individual rights and peoples rights.⁶⁵⁶ This support of political rights and freedoms by international organisations and governments, however, has led to conflicts with the principle of non-interference. This research has also discussed the evidence that international attention to human rights and freedoms has contributed to a more flexible interpretation of the traditional concept of non-interference. Under the still-evolving consensus, the international community may now undertake measures to intervene for the protection and promotion of human rights. This new, more flexible interpretation has found expression in many cases, such the Security Council interventions in Somalia and Libya and the legal rules adopted by the General Assembly of the UN, including the Universal Declaration of Human Rights.

However, political differences and the interests of international players have occasionally limited this international trend. This can be seen in the case of the continuing violence in Syria, where the governments of Russia and China oppose any form of international intervention, asserting the right of national sovereignty against the rights of the Syrian people to political self-determination. This opposition has had the practical effect of leaving the Syrian regime intact, despite more than 40 years of persecution of its citizens.⁶⁵⁷ Many Third World countries are likely to be non-democratic regimes that, under the pretext of state sovereignty, do not allow the interference in matters relating to democracy and human rights. Interventions in these situations would give major powers the opportunity to control the other countries' economic resources in the wake of political independence.⁶⁵⁸

This possibility drives the position and statements by some countries in the Middle East, a region torn by revolts over political self-determination. Former Libyan leader Muammar

⁶⁵⁶ Bardo Fassbender, *Securing Human Rights?: Achievements and Challenges of the Un Security Council*, Oxford University Press, 2011, pp 98-100.

⁶⁵⁷ David P. Forsythe, *The UN Security Council and Response to Atrocities: International Criminal Law and the P-5*, *Human Rights Quarterly* (2012) Volume 3, pp 839-863.

⁶⁵⁸ Thomas George Weiss, *Humanitarian Intervention: Ideas in Action*, London Polity, 2008, p 97.

Gaddafi asserted that the Western colonial powers want to regain control of the region.⁶⁵⁹ The Syrian media has also consistently maintained that these interventions are an extension of the colonial era.⁶⁶⁰ Similarly, during the past quarter of the twentieth century, officials of the former Eastern European socialist states repeatedly argued that the UN debates on issues of democracy and human rights were solely an attempt by the major powers to intervene in their internal affairs, thereby damaging their national independence.⁶⁶¹

In contrast, countries interested in supporting human rights and freedoms have recognised the need for the international community to monitor the freedoms and rights of individuals in different countries.⁶⁶² This need has been recognised by many governments regarding the violations of human rights in Syria. Accordingly, these countries have applied a range of economic, diplomatic and political sanctions against the Syrian regime in response to its refusal to grant self-determination to its people. The blatant violations of human rights in response to calls for democracy have raised great concern among the international community.⁶⁶³

It is clear that respect for human rights and freedoms, including the right to political self-determination, cannot be achieved if every state may observe or deny these rights within its borders. It, therefore, is advisable that each state extends its respect for these rights and other peoples beyond its borders, under the governance of a responsible international community.⁶⁶⁴ Accordingly, Article 56 of the UN Charter obliges members to act individually or collectively to achieve the purposes set forth in Article 55.⁶⁶⁵

⁶⁵⁹ IBM Research, 'Data Set: Muammar Gaddafi's State TV Speech, 22 February 2011' (IBM Many Eyes 29 March 2011) <<http://www-958.ibm.com/software/data/cognos/manyeyes/datasets/muammar-gaddafis-state-tv-speech-2/versions/1>> accessed 04 July 2012.

⁶⁶⁰ China Daily, 'Syrian Envoy praises role of China, Russia' (China.org 16 August 2012) <http://www.china.org.cn/world/2012-08/16/content_26251674.htm> accessed 22 August 2012; see also International Movement for a Just World, 'Syrian News' (Just-international.org 9 May 2012) <http://just-international.org/index.php?option=com_content&view=article&id=5435:syrian-news-on-may-9th-2012&catid=45:recent-articles&Itemid=123> accessed 19 July 2012.

⁶⁶¹ Spyros Economides, *United Nations Interventionism, 1991-2004*, Cambridge University Press, 2007, p234.

⁶⁶² Jennifer Moore, *Collective Security with a Human Face: An International Legal Framework for Coordinated Action to Alleviate Violence and Poverty*, *Denver Journal of International Law and Policy* (2004) Vol. 33, No.1.

⁶⁶³ Several regional organizations, including the League of Arab States or European Union countries, have imposed economic and military sanctions on Syria, such as banning the export of military equipment and food products and dealing with the Syrian banks.

⁶⁶⁴ Belden Fields, *Rethinking Human Rights For the New Millennium*, Palgrave Macmillan, 2003, p4

⁶⁶⁵ UN Charter (1945) Article 56.

A number of international instruments and conventions have adopted the concept of political rights and freedoms. Among the foremost examples is the International Covenant on Civil and Political Rights, of which Article 1 states,

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.⁶⁶⁶

The Universal Declaration of Human Rights established the basis for a universal legal system of human rights and freedoms. Article 28 states that ‘everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized’.⁶⁶⁷ Issued in 1970, UN General Assembly resolution No. 2625, the Declaration on Principles of International Law Concerning Friendly Relations, clearly provides for oppressed peoples’ right to struggle for fairness and to receive the necessary moral and material assistance.⁶⁶⁸ In addition, paragraph VIII of the 1975 Helsinki Convention states that ‘all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status’.⁶⁶⁹

Many regional conventions, such as the Charter of the EU, have also embraced these political rights. For example, Articles 4 and 5 of the Charter of Fundamental Rights of the EU focus on the principles of human dignity, while Articles 9 to 16 specify the basic freedoms that should be enjoyed by European citizens, and Articles 49 and 50 summarise the concepts of social justice and equality of rights.⁶⁷⁰ Similarly, Article 13 of the (AU Charter on Human and Peoples’ Rights states:

⁶⁶⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 56 <<http://www2.ohchr.org/english/law/ccpr.htm>> accessed 12 September 2012.

⁶⁶⁷ Universal Declaration of Human Rights (1948) , Article 28
<<http://www.un.org/en/documents/udhr/index.shtml>> accessed 12 September 2012.

⁶⁶⁸ Declaration on Principles of International Law Concerning Friendly Relations (1970) (Principles of International Law) <<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>> accessed 12 September 2012.

⁶⁶⁹ Conference on Security and Co-operation in Europe, ‘Helsinki Final Act 1975’ (Helsinki)
<<http://www.osce.org/mc/39501?download=true>> accessed 14 July 2012.

⁶⁷⁰ Charter of the Fundamental Rights of the European Union (2000) <<http://www.eucharter.org/>> accessed 14 September 2012.

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.⁶⁷¹

Therefore, the international behaviour of nation states, in particular after the establishment of the UN in 1945 has demonstrated a clear interest in the right to self-determination and the support of those political rights enshrined in contemporary international law. This support has been manifested through the following actions:

1. The establishment of organisations, associations and committees to monitor and preserve those rights and freedoms, including the UN Office of the High Commissioner for Human Rights,⁶⁷² UN Fund for support of democracy,⁶⁷³ European Parliament's Committee for Human Rights,⁶⁷⁴ African Commission on Human Rights⁶⁷⁵ and Peoples' Rights and the Inter-American Commission on Human Rights⁶⁷⁶
2. The organisation of international treaties and conventions and regional agreements which promote the right of political self-determination, such as the 1966 International Covenant on Civil and Political Rights (⁶⁷⁷ 1981 African Charter on Human and Peoples' Rights, ⁶⁷⁸ 1990 Copenhagen meeting of the Organization for Security and Cooperation on humanitarian issues⁶⁷⁹ and the 1975 Helsinki Convention⁶⁸⁰

⁶⁷¹ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) <<http://www.achpr.org/instruments/achpr/>> accessed 14 September 2012.

⁶⁷² Brian D. Lepard, Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions, Pennsylvania State University Press, 2002, p120.

⁶⁷³ UN Democracy Fund, 'About US' (UN Democracy Fund) <http://www.un.org/democracyfund/About_US/about_us_index.html> accessed 19 September 2012.

⁶⁷⁴ European Parliament, 'Human Rights' (European Parliament) <<http://www.europarl.europa.eu/committees/en/droi/home.html#menuzone?>> accessed 19 September 2012.

⁶⁷⁵ Doebller 179; See also African Commission on Human Rights and Peoples' Rights on <<http://www.achpr.org/>> accessed 21/09/2012.

⁶⁷⁶ Organization of American States, 'Inter-American Commission on Human Rights, ' (OAS) <<http://www.oas.org/en/iachr/>> accessed 20 September 2012.

⁶⁷⁷ The International Covenant on Civil and Political Rights (1966)

⁶⁷⁸ African Charter on Human and Peoples Rights (1981) <<http://www.achpr.org/instruments/achpr/>> accessed 14 September 2012

⁶⁷⁹ Organization for Security and Co-operation in Europe (OSCE) 'Document of Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990) <[>](http://www.osce.org/odihr/elections/14304) accessed 6 August 2011.

⁶⁸⁰ Conference on Security and Cooperation in Europe, Helsinki final Act (1975) .

3. The measures consistently undertaken by a number of countries and international organisations against those who violate those rights and freedoms, such as the 1960–85 international sanctions on South Africa,⁶⁸¹ 1980 economic sanctions on Uruguay,⁶⁸² recent economic sanctions on Syria based on a 2011 decision by the Turkish government,⁶⁸³ EU sanctions on Syria imposed in 2011⁶⁸⁴ and 1994–95 US military measures to support democracy in Haiti.⁶⁸⁵
4. Public statements by the leaders of countries in support of those rights and freedoms. For example, US President George H.W. Bush stated on 20 December 1989 that the entry of US troops into Panama was intended to defend democracy and human rights in that country.⁶⁸⁶ On the decision to intervene in the uprising of the Libyan people against Gaddafi's government, Cameron said,

I think it is the moment for Europe to understand we should show real ambition about recognising that what's happening in North Africa is a democratic awakening, and we should be encouraging these countries down a democratic path.⁶⁸⁷

The decisions and declarations supporting human rights, along with the customary rule established by the behaviour of the international community, have laid a clear foundation for the legal obligation to support and preserve the right to political self-determination. The international community has a proven record of attempting to ensure respect for the rights

⁶⁸¹ Christof H. Heyns, Frans Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, Kluwer Law International, 2002, pp 539-540.

⁶⁸² Marcel Germain, 'Blunt Instrument Sanctions Don't Promote Democratic Change' *Boston Review* (Boston 6 February 6 2012) <http://www.bostonreview.net/BR37.1/trita_parsi_natasha_bahrami_iran_sanctions.php> accessed 16 October 2012.

⁶⁸³ Buckley, Caitlin A. 2012. *Learning from Libya, Acting in Syria*. *Journal of Strategic Security* (2012) Vol.5, pp. 81-104.

⁶⁸⁴ *Ibid.*

⁶⁸⁵ David Wippman, *Defending Democracy through Foreign Intervention*, *Houston Journal of International Law*, (1997) Vol. 19, No. 3.

⁶⁸⁶ George H. W. Bush: *Address to the Nation on Panama—December 20 1989* (Historical Speeches 16 January 2009) <<http://greatspeeches.wordpress.com/category/twentieth-century-speeches/george-h-w-bush/>> accessed 26 September 2012.

⁶⁸⁷ Joe Murphy. 'EU Leaders Fail to Agree Action Plan for Libya' *London Evening Standard* (London, 11 March 2011) <<http://www.thisislondon.co.uk/standard/article-23931030-give-up-power-immediately-eu-prepares-gaddafi-ultimatum.do>> accessed 11 March 2011.

and freedoms guaranteed by those documents, in particular the right to political self-determination, regardless of the territorial boundaries that separate countries.

However, the legal texts that serve as the basis for international intervention in support of the right to self-determination do not necessarily legitimise international intervention on humanitarian grounds. Certain restrictions must be followed to justify an intervention, and exceeding them removes the legitimacy of the action. This aspect of intervention will be discussed in the next section of this chapter.

4.4 Legal limitations to the legitimacy of intervention to promote the right of political self-determination

A discussion of international intervention in its general form typically is limited to a military perspective. Historically, intervention has been associated with interference to ensure the protection of individual rights to be free from murder, persecution and torture. However, this chapter has discussed the idea that the intellectual justification for the right to self-determination stems from global progress towards the acceptance of inalienable individual human rights and dignity. These rights and freedoms are not consistent with the use of armed force, because their basic tenets pertain to security and stability for humankind. A fundamental criterion for achieving these rights is to remove any dictatorial regime and thereby free the populace from injustice, oppression and tyranny.⁶⁸⁸

Therefore, support for the right of political self-determination does not necessarily rely upon armed force, although it can be an important tool in addressing human rights violations. This practice is consistent with the rules of modern international law, which prohibit the use of armed force in international relations, except (for legitimate defence and to resist repression).⁶⁸⁹ Regardless of the human and intellectual motives for international intervention to support political self-determination, the jurisprudence of humanitarian intervention

⁶⁸⁸ J. L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, p 106.

⁶⁸⁹ Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania State University Press, 2002, p120.

remains debatable. Its core elements are inconsistent with the principle of non-interference, which is one of the important legal principles guiding international relations.

As mentioned, the principle of non-interference has become flexible, but the codification of this principle has not been understood widely. In addition, the modern intellectual trend to support and promote the protection of those rights has gained strength through the customary rules. Therefore, it is difficult to determine the core elements of the implementation of intervention. However, UN General Assembly resolutions Nos. 2131 (1965) and 2625 (1970) state that ‘no State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign’..⁶⁹⁰

These resolutions reveal that coercion must be present for an action to be considered intervention, whether military or non-military, to support the right of self-determination in the internal affairs of a targeted state. Effectively, there must be no doubt that an attack on the sovereign rights of the target country would compel the government of that country to meet popular demands for the right of political self-determination.⁶⁹¹ Therefore, to be legal, any intervention must therefore be examined for elements of coercion. Should coercion be found, the intervention measures taken against that State can be legitimated.⁶⁹² Consequently, it is important to identify the different aspects of this element in both international jurisprudence and practices in order to determine whether supporting the right to political self-determination involves unlawful inference. This issue is examined in the next section of this chapter.

⁶⁹⁰ Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, United Nations General Assembly Res 2331 (1965) (Declaration on the Inadmissibility) <http://untreaty.un.org/cod/avl/ha/ga_2131-xx/ga_2131-xx.html> accessed 12 June 2011; See also Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations , Resolution No. 2625 (1970) <http://www.oosa.unvienna.org/oosa/en/SpaceLaw/gares/html/gares_25_2625.html> accessed 14 Jun 2011.

⁶⁹¹ Tarcisio Gazzini, NATO Coercive Military Activities in the Yugoslav Crisis (1992–1999), *European Journal of International Law* (2001) Vol. 12, pp. 391-436.

⁶⁹² Sean D. Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order*, University of Pennsylvania Press, 1996, p13.

4.5 The element of coercion in international intervention

Despite agreement about the need to consider whether coercion has rendered intervention in the internal affairs of other countries unlawful, no formal agreements in international law have dealt with the issue of coercion.⁶⁹³ The specific requirements for the existence of coercion vary according to the perspective of the international parties involved, whether these are countries, international organisations or the UN itself.⁶⁹⁴ When nation states intervene, coercion is more likely to be proven than when the UN does because of the international legal status it enjoys and international parties' different interpretations of Article 2(7) of the UN Charter,⁶⁹⁵ which forms the legal framework for UN intervention in states' internal affairs.

In the study of the element of coercion, it therefore is necessary to determine the legal content of the idea of coercion and the scope of the idea of coercion in the interventions undertaken by countries or the UN.

4.5.1 The first requirement: The legal content of the idea of coercion

Coercion is widely thought to be an essential component in determining the illegality of interference in the internal affairs of a country. For example, Article 32 of the Charter of the Economic rights and Duties of States, adopted by the UN General Assembly in December 1974, prohibits any measures that might compel a State in the exercise of its sovereign rights.⁶⁹⁶ Also pertinent is Article 4 on the Declaration on the Establishment of a New International Economic Order, which explicitly forbids states from undertaking interventions for political coercion or military and economic control.⁶⁹⁷ In addition, General Assembly issued and reaffirmed resolutions Nos. 2131 (1965) and 2625 (1970) on the grounds that coercion is a core constituent element of illegal intervention in the internal affairs of

⁶⁹³ Curtis Francis Doebbler, *International Human Rights Law: Cases and Materials*, CD Publishing, 2004, p139

⁶⁹⁴ Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law*, Cambridge University Press, 2003, p5.

⁶⁹⁵ James Pattison, *Humanitarian Intervention and the Responsibility To Protect: Who Should Intervene?* Oxford University Press, 1 May 2010, p98.

⁶⁹⁶ Charter of Economic Rights and Duties of States, UNGA Res 3281 (December 1974), <<http://www.un-documents.net/a29r3281.htm>> accessed 2 October 2012.

⁶⁹⁷ Declaration on the Establishment of a New International Economic Order, UNGA Res 3201 (May 1974), <<http://www.un-documents.net/s6r3201.htm>> accessed 3 October 2012.

countries.⁶⁹⁸ Such interventions are not restricted to support of the right to political self-determination.

Many other international declarations and resolutions, such as Resolution 3171 (1973) on Permanent Sovereignty over Natural Resources, stipulate that countries should refrain from any form of coercion against any other country.⁶⁹⁹ This same restriction is contained in General Assembly Declaration No. 31/91 (1976) on non-interference in the internal affairs of states. The fourth item in the declaration specifically condemns any coercion intended to prejudice the political or economic system of another country.⁷⁰⁰

The ICJ also addressed this issue in its 27 June 1986 judgment whether the activities of military and paramilitary forces in Nicaragua constituted non-interference or coercion.⁷⁰¹ According to this decision, intervention is illegitimate whenever it imposes coercion on matters integral to the internal sovereignty of the state, such as the right to choose a nation's political, economic, social and cultural systems.

Accordingly, an intervention can be confirmed as legitimate even when based on the grounds of coercion if the intervention cannot occur without coercion or interference in the affairs of that country, rather than changing the political orientation of its ruling regime.⁷⁰² Despite this assertion, the mentioned documents discussed neither specified what could be intended under duress nor provided detailed descriptions of the forms of coercion.⁷⁰³ Therefore, the concept of coercion must necessarily be subjected to broad interpretations in accordance with international interests. This increases the complexity of interpretation because no precise

⁶⁹⁸ Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, United Nations General Assembly Res 2331 (1965) (Declaration on the Inadmissibility) <http://untreaty.un.org/cod/avl/ha/ga_2131-xx/ga_2131-xx.html> accessed 12 June 2011; See also Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, Resolution No. 2625 (1970) <http://www.oosa.unvienna.org/oosa/en/SpaceLaw/gares/html/gares_25_2625.html> accessed 14 Jun 2011.

⁶⁹⁹ Permanent Sovereignty over Natural Resources, UNGA Res 3171 (December 1973) <<http://daccess-ods.un.org/TMP/7861074.20921326.html>> accessed 3 October/2012.

⁷⁰⁰ Non-Interference in the Internal Affairs of States, UNGA Res 31/91 (December 1976), <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/31/91&Lang=E&Area=RESOLUTION> accessed 3 October 2012.

⁷⁰¹ Case of the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) <<http://www.ICJ-cij.org/docket/files/70/9615.pdf>> accessed 09 August 2011.

⁷⁰² Martin A. Smith, Paul Latawski, *The Kosovo Crisis: The Evolution of Post Cold War European Security*, Manchester University Press, 2004, p24.

⁷⁰³ Curtis Francis Doebbler, *International Human Rights Law: Cases and Materials*, CD Publishing, 2004, p139

definition of coercion exists in international law.⁷⁰⁴ In addition, international jurisprudence often uses other expressions, such as deterrence or cram, to express coercion.

When discussing the element of coercion with regards to interference in countries' internal affairs, it is important to emphasise that coercion take place not only through military means⁷⁰⁵ but also through economic and diplomatic measures.⁷⁰⁶ If there were jurisprudential agreement or a legal text limiting intervention to military means, it would mean there is no problem because the military action makes the coercion more pronounced. Therefore, such interventions do not require a comprehensive study and extensive justification for coercion, as the right of political self-determination is consistent or compatible with non-military means, as mentioned.

The legal texts mentioned above have included military and non-military means, such as economic and political sanctions, within the scope of coercion. This definition overrides the ICJ decision in the Nicaragua case that stated explicitly that that intervention is illegitimate whenever coercion is applied to matters at the core of the state's internal sovereignty. However, in this and other cases, the ICJ decided that the economic intervention employed by the US lay outside the scope of the principle of non-interference.

This line of thinking was evident at the beginning of the case in May 1985, when the US government undertook a series of economic measures, such reducing its share of sugar imports and completely banning the export and import of goods from Nicaragua.⁷⁰⁷ These measures have affected on Nicaragua and caused huge economic losses. However, when the case was presented to the ICJ, the resolution issued on 27 June 1986 stated that the Court is unable to regard such action in the present case as a breach of the customary law principle of non-interference.⁷⁰⁸

⁷⁰⁴ James Fry, *Coercion, Causation, and the Fictional Elements of Indirect State Responsibility*, Vanderbilt Journal of Transnational Law (2007) Vol. 40, No. 3.

⁷⁰⁵ Martin A. Smith, Paul Latawski, *The Kosovo Crisis: The Evolution of Post Cold War European Security*, Manchester University Press, 2004, p24.

⁷⁰⁶ Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania State University Press, 2002, p120.

⁷⁰⁷ Christian Tomuschat, *Human Rights: Between Idealism and Realism*, Oxford University Press, 2003, p220

⁷⁰⁸ Case of the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) <<http://www.ICJ-cij.org/docket/files/70/9615.pdf>> accessed 09 August 2011.

The ICJ position's ICJ could be interpreted as arguing that the economic measures lack the character of coercion and compulsion, because the US did not force Nicaragua to commit any particular act.⁷⁰⁹ In theory, Nicaragua could reject these measures and take counter-measures, such as establishing new commercial exchanges with other countries. This possibility provided the logical explanation for the ICJ's denial that these measures constituted coercion.

In summary, coercion plays an essential role in determining whether intervention in a country's internal affairs is legitimate. Coercion can be political, economic or military measures, but the important consideration is the effect that the use of these measures has upon the country and its right to freedom of decision. If the country can accept or refuse the measures and its freedom of decision is unaffected, the intervention does not constitute illegal interference in its internal affairs. These analyses and arguments in support of the right to political self-determination are reasonable and balanced. This right may be supported through economic measures and finds political and jurisprudential expression in the ICJ's judgment in the case of Nicaragua. Within the wider consideration of human rights, the right to political self-determination can be encouraged through coercion on the grounds that these rights belong to the people, not the government which only possesses sovereignty as a grant from the people. Therefore, whether coercion constitutes revenge from the government or intervention on behalf of the people depends upon its implementation by the UN or a particular country.

4.5.2 The second requirement: The extent of the idea of coercion in an intervention implemented by the United Nations or a country

The analysis of the former requirement seems to clearly stipulate when an element of coercion makes an intervention in a country's internal affairs unlawful. This element is permitted when incorporated into the existing framework of international laws and agreements but is deemed illegal when the intervening party, whether a country or organisation, disregards all aspects of the targeted country's sovereignty. An examination of the various standards governing the legality of previous interventions reveals that the legitimacy of the action seems to be determined based on what entity conducts the

⁷⁰⁹ Pleadings, oral arguments, documents, International Court of Justice, 2000, pp 99-102.

intervention. This standard might stem from the different legal bases used to govern interventions by the UN and by individual countries.⁷¹⁰

Article 2(7) of the UN Charter states that

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state ... but this principle shall not prejudice the application of enforcement measures under Chapter VII.⁷¹¹

This article set out the legal framework governing UN interventions in affairs falling within nations' domestic jurisdiction. A literal interpretation of this text suggests that intervention by the UN is permitted in only one scenario: to arrest the internal jurisdiction of the state targeted for intervention. In such a case, interference is not required to include or exclude an element of coercion, but when the state divests the target country of all internal competences and authority, the intervention becomes illegitimate. Consequently, with the exception of the Security Council, no UN organs can issue a decision pertinent to the internal, sovereign rights of countries, as this would constitute an illegal intervention in the affairs of that country. This interpretation seems confirmed by the preparatory work for the conclusion of the UN Charter. Specifically, the Secretary-General's request for the Australian delegate to include the exception for measures of repression in Article 2(7)⁷¹² seems to indicated a desire to prevent the Security Council from taking any repressive measures in the sovereign affairs of states.

However, it would be illogical to state that the principle of non-interference applies to all legal acts issued by UN organs, with the exception of repressive measures permitted to the Security Council by Chapter VII of the Charter. This restriction would limit the Security Council's ability to deal with matters relating to the internal jurisdiction of member countries.⁷¹³ To the contrary, the Security Council has attempted to ensure international peace

⁷¹⁰ Ved Nanda, *Tragedies in Somalia, Yugoslavia, Haiti, Rwanda and Liberia - Revisiting the Validity of Humanitarian Intervention under International Law*, *Denver Journal of International Law and Policy* (1998) Vol. 26, No. 3-4.

⁷¹¹ United Nations Charter (1945) Article 2.

⁷¹² Benedetto Conforti, *Law And Practice Of The United Nations*, Kluwer Law International, 2000, pp 136-140.

⁷¹³ J. L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, pp 248-250.

and security in accordance with the provisions of Article 24 of the UN Charter.⁷¹⁴ The council also has freedom in issues involving repressive regimes, because these fall within the exceptions provided in Article 2(7), although this discretion in the steps taken to combat repression is subject to different interpretations.⁷¹⁵ In addition, the Council does not have the authority to initiate discussion of issues falling within member states' jurisdiction because this conduct is not subject to the provisions of Article 2(7). Undertaking military action thus is more difficult as it must be discussed and voted upon before commencing.

This opinion gives all dictatorial rulers freedom to abuse and persecute their people without regard for the rights accorded to them under international law.⁷¹⁶ Thus, curbing the powers of the UN runs contrary to the modern trend in international law to protect human rights. To interpret the principle of non-interference so broadly as to include all acts of the Security Council and thereby narrow its work would increase the power of tyrants and create an environment in which international regulations do not encourage the protection of human rights.⁷¹⁷

Article 42 of the UN Charter gives the Security Council a crucial means to grade the actions of the Board according to the severity of the damage likely to occur from the non-military approaches permitted in Article 41 and the military means allowed by Article 42.⁷¹⁸ These permissions, therefore, could expand the scope of legitimate actions by the council on the basis of the main objective, set out in Article 24, to achieve international peace and security.⁷¹⁹ The council's work is dominated by this broad objective, regardless of the misuse of veto power by the permanent members. In addition, international practices to protect human rights have weakened this principle, which has become more flexible. This has been accomplished by various interventions by the UN and international community to protect and support human rights.

⁷¹⁴ UN Charter (1945) Chapter V.

⁷¹⁵ David Malone, U.N. Security Council: From the Cold War to the 21st Century, Lynne Rienner, 2004, p 598

⁷¹⁶ Samantha Power, Graham Allison Realizing Human Rights: Moving from Inspiration to Impact, Palgrave, Macmillan, 2006, p26; also see Heike Krieger, The Kosovo Conflict and International Law: An Analytical Documentation 1974-1999, Cambridge University Press, 2001, p472.

⁷¹⁷ Brian D. Lepard, Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions, Pennsylvania State University Press, 2002, p273.

⁷¹⁸ UN Charter (1945) Chapter VII.

⁷¹⁹ UN Charter (1945) Chapter V.

These developments have allowed the element of coercion to be influenced by the shift in international perceptions and the ideology concerning the principle of non-interference.⁷²⁰ Therefore, it has become acceptable for an element of coercion to be introduced when the humanitarian situation in any country calls for international intervention.⁷²¹ This change has occurred in accordance with contemporary international law, as formulated in conventions, instruments and customary rules, calling for the support and promotion of basic human rights, including the right to political self-determination. Arguably, it therefore is appropriate to place less emphasis on the traditional view in which coercion serves as an essential element in determining the legality of an action. Increasingly, the importance of human rights supersedes all other considerations.⁷²² Consequently, the international community more frequently accepts interventions, especially in cases in which gross violations of human rights are either occurring or impending. In those cases where international human-rights laws are invoked to stop the violations of these laws, contemporary international customary laws do not prevent international intervention. Under certain conditions then, interventions to stop any actions that degrade human dignity and restrict freedoms may be justified.⁷²³

Thus, countries' internal competences regarding human rights and freedoms seem restricted. These developments give rise to the fundamental question of whether freedoms and political rights have transcended the domestic jurisdiction of states. This question is discussed in the next section in order to determine the importance of those rights and freedoms, including the right to political self-determination.

4.6 Domestic jurisdiction and political rights and freedoms

The legal framework for international intervention in the internal affairs of countries requires that such an intervention be exercised in the domestic jurisdiction of the affected country. With the development of the principle of non-interference and the dramatic shift caused by

⁷²⁰ Ashok Swain, Ramses Amer, Joakim Ojendal, *The Democratization Project: Opportunities and Challenges*, London: Anthem, 2009, p54.

⁷²¹ James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* Oxford University Press, 2010, p. 136.

⁷²² Brian D. Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania State University Press, 2002, p144.

⁷²³ Matthew Cooper, *A Note to States Defending Humanitarian Intervention: Examining Viable Arguments before the International Court of Justice*, *Denver Journal of International Law and Policy* (2011) Vol. 40, No. 1-3.

the growing attention to human rights and the principle of international responsibility,⁷²⁴ it becomes essential to identify which issues fall within the domestic jurisdiction of the countries.

This raises the question of whether, if the right to political self-determination lies within the domestic jurisdiction of a state, the international community may intervene to force a government to meet the wishes of its people to gain exercise this right. Certainly, the issues of human rights violations are not limited to the domestic jurisdiction of countries,⁷²⁵ as confirmed by numerous international practices explored earlier. This suggests that political rights and freedoms, especially the right to self-determination, should also exceed the jurisdiction of the state.

Intervention to protect human rights enjoys broad acceptance under customary rules, for which there is a consensus among nations and organisations which belong to the international community.⁷²⁶ However, the wide variation in views on the issue of human rights violations complicates the legal position of intervention to support political self-determination. This is especially true if international jurisprudence views political self-determination as an indivisible human right.

UN General Assembly resolution No. 2131 on the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty stipulates that ‘every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State’.

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In addition, General Assembly resolution 2625 on the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States addresses the principle of non-interference in the internal and external affairs of the countries. This

⁷²⁴ James Pattison, *Humanitarian Intervention and the Responsibility to Protect: Who Should Intervene?* Oxford University Press, 2010, p. 136.

⁷²⁵ Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, Kluwer Law International, 1999, p98.

⁷²⁶ Daphne Richmond, *Normativity in International Law: The Case of Unilateral Humanitarian Intervention*, *Yale Human Rights and Development Law Journal* (2003) Vol. 6, No. 45.

⁷²⁷ Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, United Nations General Assembly Res 2331 (1965) (Declaration on the Inadmissibility) <http://untreaty.un.org/cod/avl/ha/ga/ga_2131-xx/ga_2131-xx.html> accessed 12 June 2011.

resolution enumerates a number of rights and duties, perhaps the most relevant of which is the sovereign right of a state to enjoy political, economic and social freedom. In the same resolution, paragraph (A) of the second item provides that states have a duty to refrain from the threat or use of force or violation of borders in order to destabilise the political or economic system of another country or to work for the overthrow of the political system of another country.⁷²⁸

These resolutions demonstrate that international intervention to support the right to self-determination can be deemed unlawful interference in the internal affairs of countries. This possibility makes it difficult to remove political rights and freedoms from domestic jurisdiction. These decisions assume the existence of an international community based on the co-existence of nations with equal sovereignty. Therefore, international support cannot be given to political self-determination because it inherently falls within the domestic jurisdiction of any country. These resolutions effectively state that absolute delivery puts the protection of human rights in general in the position of seizure and non-implementation. Consequently, the international community cannot take measures against a dictatorial ruler who commits crimes against his own citizens and their human rights.⁷²⁹ However, this position contradicts contemporary thought and practice, as shown in this chapter. There is no doubt that dictatorial rule directly relates to the protection of human rights and that these rights are also closely linked with the right to self-determination. When citizens want to rid their country of a dictatorship, they also want to end human rights violations.⁷³⁰

Many international conventions and resolutions support the right of political self-determination, particularly those issued by the UN General Assembly. For example, Article 1 of the General Assembly resolution No. 2200 (1966) on the Declaration of the International Covenant on Civil and Political Rights stipulates that

⁷²⁸ Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, Resolution No. 2625 (1970)

<http://www.oosa.unvienna.org/oosa/en/SpaceLaw/gares/html/gares_25_2625.html> accessed 14 Jun 2011.

⁷²⁹ J. L. Holzgrefe, Robert O. Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge University Press, 2003, pp 20-21.

⁷³⁰ Simon Chesterman, *Just War Or Just Peace?: Humanitarian Intervention and International Law*, Oxford University Press, 2002, p109; See also Samuel Totten, *The Prevention and Intervention of Genocide: An Annotated Bibliography*, Routledge, 2007, p184; see also International Commission on Intervention and State Sovereignty, International Development Research Centre, *The Responsibility to Protect: Research, Bibliography, Background : Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty*, IDRC, 2001, p66.

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.⁷³¹

Article 25 provides a similar right for peoples to participate effectively in their countries' political process.⁷³²

Similarly, Article 30 of the Constitutive Act of the (AU forbids participation by governments that make decisions in an unconstitutional manner.⁷³³ Article 9 of the Charter of (OAS states that

A Member of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups and any other bodies established.⁷³⁴

The political rights of peoples must exceed the scope of domestic jurisdiction when international organisations suspend the participation of governments that govern undemocratically from international activities.

Similarly, the Institute of International Law's September 1989 decision on the protection of human rights and the principle of non-interference in the internal affairs of countries emphasised that respect for human rights constitutes a commitment of each country towards the international community. This decision provides that a country that violates this commitment cannot evade its international responsibility.⁷³⁵

⁷³¹ International Covenant on Civil and Political Rights (1966).

⁷³² Ibid.

⁷³³ Constitutive Act - African Union (2000) <http://www.africa-union.org/root/au/aboutau/constitutive_act_en.htm> accessed 3 August 2012.

⁷³⁴ The Charter of the Organization of American States (1948).

⁷³⁵ International Law Institute, 'The Protection of Human Rights and the Principle of Non-Intervention in Internal Affairs of States' (University of Minnesota Human Rights Library 13 September 1989) <<http://www1.umn.edu/humanrts/instree/1989b.htm>> accessed 14 October 2012.

The adoption of these human rights resolutions by the International Law Institute indicate that human rights are no longer primarily under the domestic jurisdiction of countries. These rights are protected regardless of whether they are individual or collective, and they include the right of peoples to political self-determination. This is true whether the rights are civil or political, cultural or religious or whether they derive from peremptory rules or complementary rules.

This development means that no state can violate human rights without incurring a sanction of some sort, and these deterrent measures cannot be considered as interference in their internal affairs. This position is illustrated in the Institute for Human Rights' adoption of the principle of international responsibility and countries' demonstrable commitment to international treaties and conventions in this area, in particular the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.⁷³⁶

Based on these considerations and considering the contrast between the international resolutions and jurisprudence, backing either position is extremely difficult because both are based on legal rules and logical arguments in the spirit of international law. However, it is unacceptable to ignore violations of human rights and political freedoms when they are neglected by domestic laws.⁷³⁷ This is especially true when the demand for those rights leads to efforts to the overthrow of dictatorial regimes, in conformity with contemporary international law.⁷³⁸ This raises important questions about the appropriate course of action to deal with the mistreatment of populations by dictatorial rulers when they people call for participation in the governance and social justice of their own country.⁷³⁹

In the same context, the question arises whether democratic governments should be obliged to be informed by local or international opinion in their interactions with dictatorships. In the context of this research, the issue is whether countries should be obligated to assist populations living under the rule of a repressive state, such as in Syria at the present time.

⁷³⁶ Maja Kirilova Eriksson, *Reproductive Freedom: In the Context of International Human Rights and Humanitarian Law*, Nijhoff Publishers, 2000, p159.

⁷³⁷ Ved Nanda, *The Global Challenge of Protecting Human Rights: Promising New Developments*, Denver Journal of International Law and Policy (2006) Vol. 34, No. 1.

⁷³⁸ Larry May, Jeff Brown, *Philosophy of Law: Classic and Contemporary Readings*, Oxford: Wiley-Blackwell, 2009, pp 191-192.

⁷³⁹ David Wippman, *Defending Democracy through Foreign Intervention*, Houston Journal of International Law (1997) Vol. 19, No.3.

There are strong arguments that this duty exists based upon the evolution of human rights in the wake of World War II and their maturation after the end of the Cold War. The international community has come to believe in the need to respect and protect these rights as a common heritage of humankind. Therefore, contemporary international law increasingly has been directed to support those seeking the protection of their guaranteed rights.⁷⁴⁰ This has resulted in greater oversight of human rights within the domestic jurisdiction of countries, obligating the international community to act to prevent infringements of these rights, such as freedom from torture or ill-treatment.⁷⁴¹

The international community has demonstrated this duty in many international interventions intended to support the right to self-determination or to provide political support for democracy directly and self-determination implicitly. The most important examples of these interventions are examined in the next chapter.

4.8 Conclusion

International law has given the international community legitimate means to intervene to promote the right of self-determination, such as economic sanctions and political measures against states which refuse to grant this right to people who claim it. Interventions may involve military force when governments suppress these claims and violate the international law on human rights. A broad interpretation of contemporary international law permits such military interventions because the right to political self-determination is viewed as essential to the achievement of international peace and security and eventual renunciation of the use of armed force. International law also encourages a gradual escalation of the use of all available means before reaching the stage of military intervention.

International interventions to promote the right of political self-determination have gained a legal basis through rules that position this right as in keeping with the spirit of international law, such as the International Covenant on Civil and Political Rights and the African Charter

⁷⁴⁰ Jennifer Welsh, *Humanitarian Intervention and International Relations*, Oxford University Press, 2003, 142.

⁷⁴¹ Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, Kluwer Law International, 1999, p98; See also Annie Bird, *Third State Responsibility for Human Rights Violations*, *European Journal of International Law* (2010) Vol. 21, pp. 883-900.

on Human Rights and Peoples' Rights. Other legal justifications are derived from the practices frequently performed by a number of countries and international organisations against those who violate this right. Examples include economic sanctions imposed by the EU on Syria and by the UN Security Council on Libya in 2011 and US President George H.W. Bush's 20 December 1989 statement that the purpose of sending US troops to Panama was to defend democracy and human rights in that country. In addition, international organisations, associations and committees have been established to monitor and maintain those rights and freedoms. These include the Office of the High Commissioner for Human Rights, UN Democracy Fund, European Parliament's Human Rights Subcommittee and African Commission on Human and Peoples' Rights.

However, these developments do not mean that absolute legitimacy is granted to any intervention undertaken to promote this right. The analysis of legality of any intervention to promote the right to political self-determination must consider restrictions, such as coercion and state sovereignty which imposes special legal obligations limiting the practice of international intervention. However, these restrictions derive their legal strength from the principle of non-interference which, the previous chapter showed, has been made more flexible by modern international practices and legal norms when violations of human rights are concerned. Thus, interventions can be more palatable if they aim to protect and promote individual rights as proscribed in the framework of international law. Such interventions may not run against the general will of the people, and it must be verified that state agencies cannot protect the people involved from crimes that violate their rights.

The next chapter examines international interventions that contributed to the promotion of the right of political self-determination in order to identify the causes of such interventions and their degree of compliance with international law. It is important to evaluate the results of these interventions and the extent to which they have provided access to good governance, which is a standard for the achievement of the right to political self-determination.

Chapter Five

International practices to promote the right of political self-determination and the principle of non-interference.

5.1 Introduction

The previous chapter examined the legal concept of international intervention to promote the right to political self-determination by analysing this type of intervention within the scope of jurisprudence and the rules of international law. This chapter looks at the real confrontation between this promote and the principle of non-interference by studying some of the actual cases dealing with the promotion of this right to determine the effect of the principle of non-interference on this promotion. In the fourth chapter, this thesis deduced that there is a curvature in the absolute concept of the principle of non-intervention, but this is more on the theoretical side. Therefore, it is better to study the real practices in the promotion of this right to know the extent of the impact of the principle of non-interference on this promotion. This chapter will thus not focus solely on the cases in the international promotion of the right to self-determination. Rather, it will also examine some of the cases in which this right has been restored, such as Haiti and Sierra Leone.

There is no doubt; international practices have played a prominent role in the development and revision of the rules of international law.⁷⁴² Many individual subjects of this law have derived standards and obligations from the rules of customary international law.⁷⁴³ Article 38 of the Statute the (ICJ clearly states that the habits of states frequently serve as a source of international law, while commitment to the principles of international law approved by civilized nations has become normative.⁷⁴⁴ These principles have been strengthened by customary international law. Individual states' repetition of certain actions evidences their conviction that results can be achieved through that action, irrespective of the potential consequences or losses. More importantly, such practices must be acceptable to the

⁷⁴² Susan Marks, What has Become of the Emerging Right to Democratic Governance? *European Journal of International Law* (2001) Vol. 22, No. 2 pp. 507-524.

⁷⁴³ Anthony Aust, *Modern treaty law and practice*, Cambridge University Press, 2000, p12.

⁷⁴⁴ Statute of the International Court of Justice (1945)

<http://www.ICJ-cij.org/documents/?p1=4&p2=2&p3=0#CHAPTER_II>.

international community. For example, international aggression or invasion, as occurred against Kuwait, is considered unacceptable, whereas the international community welcomes humanitarian interventions, such as those in Somalia and Rwanda.

This study will be divided into the following two main sections: the first section examines international practices to promote the right of political self-determination during the Cold War, whereas the second section examines some international practices after the end of the Cold War. The reason for this division is to determine the extent of the influence of the principle of non-interference in the two periods in the evolution of international law. This is because many international law scholars consider the next phase of the Cold War to be a crucial stage in the interest of human rights and the rights of peoples. Therefore, it is very appropriate to follow some actual cases from the Cold War period before then moving on to examine some cases from after the end of the Cold War.

Therefore, this chapter is divided into two major sections:

1. International practices during the Cold War (Southern Rhodesia, the Dominican Republic and Panama).
2. International practices after the Cold War (Haiti, Sierra Leone, Libya and Syria).

5.2 International practices to promote the right of political self-determination and the principle of non-interference in the Cold War

The Cold War resulted in an international division that has a profound impact upon international decision-making.⁷⁴⁵ Although this period was characterised by the ending of numerous human rights violations, especially in the judicial field,⁷⁴⁶ it nevertheless did not witness significant development of the rules of customary international law⁷⁴⁷ This lack does not necessarily imply that these rights were not accorded full protection. To the contrary,

⁷⁴⁵ Daniel Joyner, 'The Security Council as a Legal Hegemon', *Georgetown Journal of International Law*, Vol. 43, No. 2, 2012.

⁷⁴⁶ Shelley Wright, *International Human Rights, Decolonisation and Globalisation : Becoming Human*, London Routledge, 2011, pp 213-220.

⁷⁴⁷ Despite the release of more than 200 different documents related to human rights during the Cold War, there is a clear deficiency in the implementation of the terms of those legal documents. As a result of the escalation of the confrontation between the United States and the Soviet Union in the Security Council and in the international conflict between them, the two countries sought to induce states to ally with them. All of the allied states would defend an ally, even if in violation of these covenants.

concrete steps were taken through the creation of codified and customary rules, such as the Final Act of the Helsinki Convention 1975,⁷⁴⁸ African Charter on Human and Peoples' Rights⁷⁴⁹ and International Covenant on Civil and Political Rights.⁷⁵⁰ All of these covenants came into being during the Cold War period, although implementation of international practices was relatively sluggish in this era, as reflected in international attention to human rights and civil liberties.⁷⁵¹

Confirming this situation are the post-Cold War interventions by the UN in Somalia, Sierra Leone and Haiti. This era also saw the Security Council issue various decisions supporting civil liberties, political rights and especially democracy. Resolution 688 (1991) supported political self-determination for the Cambodian people by organising a democratic election under UN supervision.⁷⁵² Resolution 973 (1995) called for a peaceful solution in Angola by conducting free and fair elections⁷⁵³ to realise the rights of the people. However, the Cold War practices of the UN, especially those of the Security Council, generally are viewed as more limited and less ambitious.⁷⁵⁴

In contrast, other mechanisms of the UN have seemed more interested in human rights and democracy. This is especially true for those less impacted by the Cold War or those that did not intervene with the parties involved in conflicts during this time. For example, both the World Bank and International Monetary Fund followed models to ensure that lending targets encouraged the privatisation of public assets and reduced the activities of the state. These measures were compatible with the foundations of democracy.⁷⁵⁵

Despite the negativity of the Cold War period, the UN and its executive apparatus, such as the Security Council and the General Assembly, still promoted the right of political self-

⁷⁴⁸ Conference on Security and Co-operation in Europe, 'Helsinki Final Act 1975' (Helsinki) <<http://www.osce.org/mc/39501?download=true>> access 12 February/2013.

⁷⁴⁹ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58.

⁷⁵⁰ International Covenant on Civil and Political Rights (1966)

⁷⁵¹ Stephen MacFarlane, Yuen Foong Khong, *Human Security and the United Nations*, Indiana University Press; Chesham, 2011, p 75.

⁷⁵² UN, Security Council, Resolution No. 688 (April 1991).

⁷⁵³ UN, Security Council, Resolution No. 973 (January 1995).

⁷⁵⁴ Jennifer M. Welsh, *Humanitarian Intervention and International Relations*, Oxford -University Press, , pp 181-182.

⁷⁵⁵ Karin Von Hippel, *Democracy by Force: U.S. Military Intervention in the Post-Cold War World*, Cambridge University Press , 2000 ,p 112.

determination. This claim is evidenced through its military and non-military interventions in support of democracy and the freedom of the people in political decision-making. This is exemplified by the events in Southern Rhodesia exemplify such interventions. In addition, a number of international interventions have occurred outside the framework of the UN, such as the intervention of the OAS in the Dominican Republic and the unilateral intervention by the United States in Panama. These cases are discussed in order to illustrate the development of law and human rights in the international context.

5.2.1 Southern Rhodesia

Rhodesia has experienced profound changes since the late nineteenth century, when it was colonised by the British South Africa Company, an organisation founded by British entrepreneur and politician Cecil Rhodes.⁷⁵⁶ After the departure of the colonialists, the white minority proceeded to seize power without free and fair elections, which prompted the Rhodesian population to express its dissatisfaction.⁷⁵⁷ In response, the UN General Assembly issued resolution 1747 (1962),⁷⁵⁸ which called for Britain to invite to general conference to draw up a new constitution. This policy was intended to facilitate a democratic solution in response to the usurpation of power by a minority group.⁷⁵⁹ The situation in southern Rhodesia was the first issue dealt with by the organs of the UN in order to promote a democratic and peaceful solution to the political struggle between the minority whites and the Rhodesian people.

However, the government of Ian Smith did not respond to the calls of the UN General Assembly but instead announced the independence of Southern Rhodesia from the British throne and approved a new constitution which gave special privileges to the white minority.⁷⁶⁰ This matter embarrassed the British government after it had fought action being taken against the decision of the General Assembly, claiming that it constituted interference

⁷⁵⁶ Tatah Mentan, *The State in Africa: An Analysis of Impacts of Historical Trajectories of Global Capitalist Expansion and Domination in the Continent*, Langaa Research Publication, 2010, p 156.

⁷⁵⁷ Jennifer Welsh, *Humanitarian Intervention and International Relations*, Oxford University Press, 2003, pp121- 124.

⁷⁵⁸ UN, General Assembly, Resolution number 1747 (June 1962).

⁷⁵⁹ *ibid.*

⁷⁶⁰ Adrian A. Roscoe, *The Columbia Guide to Central African Literature in English Since 1945*, Columbia University Press, 2008, p18.

in the internal affairs of Rhodesia. This position forced the General Assembly, to declare that the usurpation of power from the Rhodesian people should be considered racially discriminatory.⁷⁶¹

Simultaneously, a protest movement began which forced the Rhodesian people to take the initiative to oppose the Smith government and the constitutional provisions that gave excessive political privileges to the white minority.⁷⁶² The theme of the African liberation movements in Rhodesia was the one-man, one-vote principle that gained wide support in order to achieve majority rule and abolish the Constitution of 1961.⁷⁶³ The Rhodesian people found great support for their right to self-determination from the newly independent African nations and the countries of the socialist bloc in the UN.⁷⁶⁴

The British government agreed to enter into long and complex negotiations with the white minority government in Rhodesia in the hopes of achieving democracy.⁷⁶⁵ On more than one occasion, British Prime Minister Harold Wilson threatened to impose strict sanctions on the Smith regime in the case of a unilateral declaration of independence. However, the Smith government ignored these threats and continued to suppress the liberation movement in Rhodesia.⁷⁶⁶

Since its inception in 1963, the Organisation of African Unity has paid special attention to the process of the decolonisation on the continent. The case of Southern Rhodesia topped the issues addressed by the organisation at the level of the African Summit and Foreign Ministers' Meeting.⁷⁶⁷ The second African Summit held in Cairo in July 1964 issued

⁷⁶¹ Myres McDougal, Michael Reisman, Rhodesia and the United Nations: The Lawfulness of International Concern, *The American Journal of International Law* (1986) Vol. 62, No. 1, pp 1-19.

⁷⁶² Jrt Wood, *So Far and No Further!: Rhodesia's Bid for Independence During the Retreat from Empire 1959-1965*, Victoria & Trafford, 2005, pp 226-238.

⁷⁶³ Adrian A. Roscoe, *The Columbia Guide to Central African Literature in English Since 1945*, Columbia University Press, 2008, p35.

⁷⁶⁴ Jrt Wood, *So Far and No Further!: Rhodesia's Bid for Independence During the Retreat from Empire 1959-1965*, Victoria & Trafford, 2005, p174.

⁷⁶⁵ *Ibid*, p407

⁷⁶⁶ Philip Murphy, 'An intricate and distasteful subject': British Planning for the Use of Force Against the European Settlers of Central Africa, 1952-65, *English Historical Review* (2006) Volume CXXI, Issue 492, pp. 746-777.

⁷⁶⁷ Adrian A. Roscoe, *The Columbia Guide to Central African Literature in English Since 1945*, Columbia University Press, 2008, p17.

Resolution No.33,⁷⁶⁸ calling for African countries to resist any move towards a unilateral declaration of independence by Rhodesia's white minority. The summit also called for bringing the matter to the UN Security Council, given that any step in this direction represented a serious threat to world peace. Popularity quickly came to the decision to make the British government accept blame for the deterioration of the situation in Rhodesia, demand the abolition of the Constitution of 1961, use force to impose its authority on the colony and work for the release of activists and African detainees imprisoned by the apartheid regime, such as Ndabaningi Sithole and Joshua Nkomo.⁷⁶⁹

The resolution also requested that the British government hold a constitutional conference representing all sectors and ethnicities of the Rhodesian population to draft a constitution to achieve democratic governance in the country. The third African summit held in Accra in October 1965 issued resolution No. 25⁷⁷⁰ which clearly condemned the weak position of the British government's weak position on the threat by white minority in Rhodesia to declare unilateral independence. The resolution also called on African countries to resort to force to resist the independence of Rhodesia under white minority rule and demanded that neighbours provide all possible support to the liberation movement in order to achieve political self-determination. As well, the resolution called on African countries to reconsider their political, economic, diplomatic and financial relationship with Britain in the case of a unilateral declaration of independence.⁷⁷¹

The Organisation of African Unity not only demanded that the African states and Britain be recognised as the parties directly concerned with the subject. It also explained to the rest of its member states the need for the UN to not recognise the white minority government that might arise after the declaration of independence. Under the prevailing conditions of the Cold War, the African countries found support from the Communist bloc countries led by the Soviet Union. This support was firmly predicated upon the right of those peoples under

⁷⁶⁸ The Third Ordinary Session of the Assembly of the African Union, Organisation of African Unity Res 33 (1964)

<http://www.africaunion.org/official_documents/council%20of%20minsters%20meetings/com/dCoM_1964b.pdf> accessed 19 February 2013.

⁷⁶⁹ Ibid.

⁷⁷⁰ OAU, The Assembly of Heads of State and Government meeting in its Second Ordinary (Accra, Ghana 1965) <http://www.au.int/en/sites/default/files/ASSEMBLY_EN_21_26_OCTOBER_196_ASSEMBLY_HEADS_STATE_GOVERNMENT_SECOND_ORDINARY_SESSION.pdf> accessed 19 February 2013.

⁷⁷¹ Ibid.

Western colonialism to enjoy self-determination.⁷⁷² African countries also showed clear support for the Non-Aligned Movement, especially when the issue was put to the UN Security Council and General Assembly later.⁷⁷³

On 11 November 1965, the Smith Government announced unilateral independence.⁷⁷⁴ The British reaction to the failure of negotiations with the apartheid regime and the unilateral declaration of independence came in a statement made by Wilson in the House of Commons in which he described the Rhodesian act as an illegal act and outright revolt against the British Crown. Moreover, the prime minister announced the withdrawal of the British High Commissioner in Salisbury (Harare) and the expulsion of the Rhodesian High Commissioner to London and stopped all commercial and financial transactions between the two countries.⁷⁷⁵

Although the British procedures against the apartheid regime appeared to be strong, they were neither decisive nor influential. Arguably, they were taken only as a procedural formality and did seem to prevent the Smith government from continuing its work. While the British government did intervene in order to end violations by the minority government in Rhodesia, African nations did initiate international procedures as a deterrent against the minority government.⁷⁷⁶

These steps are most evident in Resolution No. 13 (1965)⁷⁷⁷ issued during the African summit held in Addis Ababa in December 1965. This resolution called for the imposition of a comprehensive ban on the minority government in Rhodesia, as well as for all African countries and allies to participate in this prohibition and non-recognition of the independence of Rhodesia. Moreover, the decision indicated the summit's desire to refer the case to the UN

⁷⁷² Elizabeth Schmidt, *Foreign Intervention in Africa: From the Cold War to the War on Terror*, Cambridge University Press, 2013, p7.

⁷⁷³ Jrt Wood, *So Far and No Further!: Rhodesia's Bid for Independence During the Retreat from Empire 1959-1965*, Victoria & Trafford, 2005, pp 299-308.

⁷⁷⁴ Elizabeth Schmidt, *Foreign Intervention in Africa: From the Cold War to the War on Terror*, Cambridge University Press, 2013, p116.

⁷⁷⁵ Myres McDougal, Michael Reisman, *Rhodesia and the United Nations: The Lawfulness of International Concern*, *The American Journal of International Law* (1986) Vol. 62, No. 1, pp 1-19 ; see also Jrt Wood, *So Far and No Further!: Rhodesia's Bid for Independence During the Retreat from Empire 1959-1965*, Victoria & Trafford, 2005, p75.

⁷⁷⁶ Richard Coggins, *Wilson and Rhodesia: UDI and British Policy Towards Africa*, *Contemporary British History* (2006) Volume 20, No. 3.

⁷⁷⁷ Council of Ministers of the Organisation of African Unity, OAU Res 13 (1965)

<http://biblioteca.clacso.edu.ar/ar/libros/iss/pdfs/oau/kCoM_1965xx.pdf> accessed 19 February 2013.

Security Council seeking a resolution to create a mass boycott of the minority white government. The resolution also stipulated that, if white minority control were not ended and democracy achieved by the end of 1965, the African countries would all cut ties with the British government as it was responsible for what had and was happening in Rhodesia.⁷⁷⁸

On 12 November 1965, one day after the announcement of unilateral independence by the white minority government, the Security Council passed Resolution 216 (1965)⁷⁷⁹ which condemned the minority white government's decision. The second paragraph of the resolution and the implicit recognition of the Security Council declared the actions of the Smith Government illegal, as they robbed people of their right to political self-determination.⁷⁸⁰ There was also recognition of democracy as a natural and legal governing system. So Resolution No. 217 passed by the Security Council on 20 November 1965 called for a halt to economic dealings with the government of Southern Rhodesia and urged the international community to impose an economic embargo. The resolution also encouraged cutting off all diplomatic relations with the minority white government. The Security Council considered that the unilateral declaration of the minority white government to be extremely serious and called on the British government to put an end to it as a threat to international peace and security.⁷⁸¹

The Security Council did not stop at those decisions and in December 1966 issued Resolution No. 232⁷⁸² banning all exports from Southern Rhodesia, including iron, chromium, copper and tobacco. The resolution also prohibited the export of all kinds of weapons and the equipment and tools needed to manufacture and maintain weapons to Southern Rhodesia. In the last paragraph of this resolution, the council stressed the non-inalienable right of the people of Southern Rhodesia to freedom and independence and recognised the legitimacy of their struggle.⁷⁸³

⁷⁷⁸ *ibid.*

⁷⁷⁹ UN, Security Council, Resolution No. 216 (November 1965).

⁷⁸⁰ Karel Wellens, *Resolutions and Statements of the United Nations Security Council: (1946 - 1989); a Thematic Guide*, BRILL, 1990, p.82.

⁷⁸¹ UN, Security Council, Resolution No. 217 (November 1965).

⁷⁸² UN, Security Council, Resolution No. 232 (December 1966).

⁷⁸³ *ibid*

On May 29, 1968 the Security Council adopted Resolution 253,⁷⁸⁴ which condemned the military actions undertaken by the minority government. More importantly, the second paragraph of this resolution recognised that the measures taken so far in the issue of Southern Rhodesia had not achieved concrete results. Therefore, the resolution called for the council to impose comprehensive economic sanctions banning the imports and exports of all kinds of goods and minerals and to stop dealing with all ships and aircraft registered in Southern Rhodesia.⁷⁸⁵

The council continued to issue resolutions: Nos. 277 (1970),⁷⁸⁶ 403 (1977),⁷⁸⁷ 411 (1977),⁷⁸⁸ 423 (1978),⁷⁸⁹ 424 (1978),⁷⁹⁰ 437 (1978)⁷⁹¹ and 445 (1979).⁷⁹² They all condemned the undemocratic measures in Southern Rhodesia and confirmed the international community's resolve to imposed economic sanctions against the non-democratic regime. The next resolution, No. 448 (1979),⁷⁹³ stated that the results of the elections conducted by the Smith government were invalid and illegal due to a lack of formal procedures. In addition, the resolution states that the Rhodesian people did not view these elections as a democratic exercise to decide their political fate.⁷⁹⁴

Note that, in all of these resolutions, the right of veto, which was such a potent weapon in the Cold War era, was not exercised by any parties. As well, all of the resolutions were approved by either all of the permanent and non-permanent council members or the consent of the majority, with the remaining members choosing to abstain from voting. This moral and physical evidence shows that the international community did not accept the non-democratic practices undertaken by the minority white government in South Rhodesia.

⁷⁸⁴ Christine Gray, *International Law and the Use of Force*, Oxford University Press, 2008, pp. 256-257; also see Security Council Resolution No. 253 (May 1968).

⁷⁸⁵ Karel Wellens, *Resolutions and Statements of the United Nations Security Council: (1946 - 1989)*; a Thematic Guide, BRILL, 1990, p.82.

⁷⁸⁶ UN, Security Council, Resolution No. 277 (March 1970).

⁷⁸⁷ UN, Security Council, Resolution No. 403 (January 1977).

⁷⁸⁸ UN, Security Council, Resolution No. 411 (June 1977).

⁷⁸⁹ UN, Security Council, Resolution No. 423 (March 1978).

⁷⁹⁰ UN, Security Council, Resolution No. 424 (March 1978).

⁷⁹¹ UN, Security Council, Resolution No.437 (October 1978).

⁷⁹² UN, Security Council, Resolution No. 445 (March 1979).

⁷⁹³ UN, Security Council, Resolution No. 448 (April 1979).

⁷⁹⁴ Karel Wellens, *Resolutions and Statements of the United Nations Security Council: (1946 - 1989)*; a Thematic Guide, BRILL, 1990, pp. 103-104

The UN General Assembly also supported the rights of the people of Southern Rhodesia to exercise political self-determination and enjoy majority government. UN General Assembly resolution No. 3115 (1973) invited the British government to undertake the necessary steps to deliver power to a government representing the majority of Southern Rhodesia.⁷⁹⁵ Resolution No. 1747 (1962) condemned the violations of political rights and public freedoms in Southern Rhodesia. The resolution called for the establishment of a consensual constitution with the participation of the full population in Southern Rhodesia, along with the immediate release of all detained politicians.⁷⁹⁶ Subsequently, UN General Assembly resolutions Nos. 2138 (1966),⁷⁹⁷ 2151 (1966)⁷⁹⁸ and 2383 (1968)⁷⁹⁹ supported the people of Rhodesia in obtaining their democratic rights.

However, this matter does not mean that the international community consistently refused to accept dictatorial governance, and we must examine the circumstances during the Cold War which contributed to the silence of the international community on the actions of dictatorial governments loyal to certain factions. This practice hindered the international resolutions and contributed to their inability to curb and stop such practices and give the people the right to practice healthy democracy.⁸⁰⁰ Although the Security Council and General Assembly were concerned with the Rhodesian people's rights to political self-determination and democracy, they turned a blind eye to emerging dictatorial governments in developing countries and those emerging from colonialism. For example, little or no attention was given to the undemocratic coup in Sudan led by Jaafar Nimeiri or the subsequent coup against a government accused of crimes against the Sudanese people.⁸⁰¹

It is clear that the international community accepted and supported the Security Council and General Assembly resolutions on Southern Rhodesia, which contributed to their individual and collective implementation African governments. Most prominently, the Frontline countries (Tanzania, Zambia, Mozambique, Angola and Botswana) offered support to the

⁷⁹⁵ UN, General Assembly, Resolution No. 3115 (December 1973).

⁷⁹⁶ David Raic, *Statehood and the Law of Self-determination*, Kluwer Law International, 2002, p131; see also UN General Assembly, Resolution No. 1747 (June 1962).

⁷⁹⁷ UN, General Assembly, Resolution No. 2138 (October 1966).

⁷⁹⁸ UN, General Assembly, Resolution No. 2151 (November 1966).

⁷⁹⁹ UN, General Assembly, Resolution No. 2383 (November 1968).

⁸⁰⁰ Jon Western, *Selling Intervention And War: The Presidency, The Media, And The American Public*, JHU Press, 2005, pp. 11-14.

⁸⁰¹ Elizabeth Schmidt, *Foreign Intervention in Africa: From the Cold War to the War on Terror*, Cambridge University Press, 2013, p206.

Rhodesian rebels' struggle to liberate their country. The heads of the five Frontline countries first met in Mozambique in February 1976 and agreed on a new strategy for the liberation of Rhodesia, in addition to supporting the rebels. With the cooperation of other nations, the Frontline countries continued to assist the people of Rhodesia, confirming their absolute support of the rebels.⁸⁰²

Here, we note the significance of the fact that the heads of the five Frontline African countries believed in the need to escalate the armed struggle against the racist white minority rule in order to achieve the liberation of Zimbabwe. Therefore, they did not pin great hopes on the possibility of achieving democracy and African majority rule through economic sanctions, international diplomatic practice and the political efforts of UN envoys to reach a diplomatic solution. UN Security Council resolution No. 232 (1966) explicitly recognised the right to struggle against the military forces of the minority white government. None of the Security Council resolutions prohibited the people of Rhodesia from struggling or using various means to save their right to protect themselves.⁸⁰³

The African countries continued to impose economic sanctions to damage the economy of the minority white government. On 3 March 1976, Mozambique Prime Minister Samora Machel closed the border between Mozambique and Southern Rhodesia, striking a serious blow to the economy of Rhodesia. As 80% of Rhodesia's exports and imports passed through Mozambique, this decision was seen as the final nail in the coffin of the racist white minority rule in Rhodesia.⁸⁰⁴

This effort did not depend solely upon the Frontline African countries. Many nations imposed economic sanctions, assisted the people's struggle to end minority white rule and banned the import of industrial products from any country which used Rhodesian chrome in its products. For example, US House of Representatives voted 250–146 to approve House Resolution 1746, authorising an embargo on chrome from Rhodesia.⁸⁰⁵

⁸⁰² Jacqueline Audrey Kalley, Elna E. Schoeman, Lydia Eve Andor, *Southern African political history: a chronology of key political events from independence to mid-1997*, London: Greenwood Press, 1999, p222.

⁸⁰³ Max Hilaire, *United Nations Law And The Security Council*, Ashgate Publishing, 2005, p12; also see UN, Security Council, Resolution No. 232, December 1966.

⁸⁰⁴ Jacqueline Audrey Kalley, Elna E. Schoeman, Lydia Eve Andor, *Southern African political history: a chronology of key political events from independence to mid-1997*, London: Greenwood Press, 1999, p220.

⁸⁰⁵ 'Rhodesian Chrome Bill Remarks on Signing H.R. 1746 into Law' (The American Presidency Project) <<http://www.presidency.ucsb.edu/ws/?pid=7184>> accessed 21 February 2013.

After numerous attempts to resolve the issue of Rhodesia, power was transferred to the majority in 1979, while ensuring adequate representation for the white minority. In the following year, the first democratic elections were held in Rhodesia, with Robert Mugabe winning the majority. He later changed the country's name to Zimbabwe and has since ruled the country with an iron fist.⁸⁰⁶ In 1987, Mugabe cancelled the constitutional provision giving the white population political privileges, making it clear that the international community played a prominent role in supporting democracy and the desire of the majority in Southern Rhodesia to gain political rights.⁸⁰⁷

Hence, it is clear that the trend of supporting the right to political self-determination in Southern Rhodesia was not influenced by the strength of the principle of non-interference in the Cold War era. The United Nations and the Organisation of African Unity were determined to give the people in Southern Rhodesia the right of political self-determination. Interestingly, on this issue, the Security Council was effective even without the right to veto, which is an important tool in international law. This effectiveness of the Security Council was clear despite the strong influence of the Cold War on the Security Council resolutions during this period.

5.2.2 Dominican Republic

Dictator Rafael Trujillo led the Dominican Republic from 1930 to 1960. The UN began threatening international intervention in the Dominican Republic when a group of American states imposed economic sanctions against this dictator. These actions resulted in a popular revolution which revealed the intransigence and the use of military force by Trujillo and his regime. Next, the OAS imposed sanctions, which led to Trujillo's resignation. The country then held its first free and fair elections in late 1962.⁸⁰⁸ In February 1963, the government issued a new constitution which regulated public freedoms and granted wide civil and political rights. Despite the rapid development of the democratic process in the Dominican

⁸⁰⁶ Elizabeth Schmidt, *Foreign Intervention in Africa: From the Cold War to the War on Terror*, Cambridge University Press, 2013, p120.

⁸⁰⁷ Jacob Wilson Chikuhwa, *A Crisis of Governance -Zimbabwe*, Algora Publishing, 2004, pp 36-39.

⁸⁰⁸ Russell Crandall, *Gunboat Democracy: The United States Interventions in the Dominican Republic, Grenada, and Panama*, Oxford: Rowman & Littlefield Publishers, 2006, pp 48-51.

Republic, the country experienced a fast military coup led by General Elias Rivera, characterised by bloody street warfare only seven months later.⁸⁰⁹

In response, the UN Security Council issued Resolution 203 (1965),⁸¹⁰ which called for a halt to the growing hostilities in the Dominican Republic. The council promised intervention in the case of a failure to implement a cease-fire.⁸¹¹ A few days later, the council issued Resolution 205 (1965),⁸¹² demanding that the cessation of hostilities be a permanent cease-fire and instructing the secretary-general to provide a full, detailed report on the situation in the Dominican Republic.⁸¹³ The OAS met to consider the Security Council resolutions and decided to send military forces to maintain security in the Dominican Republic until a compromise could be reached and a national coalition government formed.⁸¹⁴

Some argue that these interventions were designed to serve the aims of the OAS in 1954 and 1962, which viewed communist control of South American countries as a threat to regional peace and security.⁸¹⁵ However these interventions, whether against the Trujillo regime or successive military coups, were aimed at establishing constitutional legitimacy.⁸¹⁶ These interventions first sought to stop oppression by the Trujillo dictatorship in 1962. The OAS suspended sanctions against the Dominican Republic in exchange for the end to Trujillo's rule and the establishment of a constitutional council to lead to a democratic president.⁸¹⁷ As a result, the country's first democratic elections took place in December 1962 and were won by Juan Bosch, but the 1963 military coup led by Rivera drove Bosch into exile.⁸¹⁸

⁸⁰⁹ Max Hilaire, *International law and the United States military intervention in the Western Hemisphere*, London: Kluwer Law International, 1997, pp 55-56.

⁸¹⁰ UN, Security Council, Resolution No. 203, May 1965.

⁸¹¹ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, IDRC, 2001, p.54.

⁸¹² UN, Security Council, Resolution No. 205 (May 1965).

⁸¹³ Max Hilaire, *United Nations Law and the Security Council*, Ashgate, 2005, p.190.

⁸¹⁴ Max Hilaire, *International law and the United States military intervention in the Western Hemisphere*, London : Kluwer Law International, 1997, p 190.

⁸¹⁵ Joel Westra, *International Law and the Use of Armed Force: The UN Charter and the Major Powers*, London: Routledge, 2007, p91. Also, Stanimir Alexandrov, *Self-Defense Against the Use of Force in International Law*, Kluwer Law International, 1996, p234.

⁸¹⁶ Elizabeth Saunders, *Leaders at war: how presidents shape military interventions*, Cornell University Press, 2011, pp 156-158.

⁸¹⁷ D.J Lecce, *International Law regarding Prodemocratic Intervention: A Study of the Dominican Republic and Haiti*, *Naval Law Review*, Vol. 45, 1998.

⁸¹⁸ Curtis Jeffords, *Origins of the Dominican Intervention: U.S. Inaction in the Overthrow of Juan Bosch in 1963*, *The Chico Historian*, 2005.

However, continued international intervention sought to restore democracy to the Dominican Republic, culminating in the United States sending an estimated 42,000 soldiers.⁸¹⁹ As a result of the pressure from the OAS, an interim government was formed and held democratic elections in July 1966. Thus, the OAS played a prominent role in the progress and restoration of the democratic process in the Dominican Republic.⁸²⁰

Then, after all of this, the Organization of American States and the United Nations contributed to ending the succession of authoritarian regimes in the Dominican Republic. In this case, the principle of non-interference could not stand against the winds of political self-determination in the Dominican Republic. The UN Security Council resolutions aimed to end the conflict, which was a result of the Dominican people no longer accepting a dictatorial government. The United States and the Organization of American States broke the concepts of the principle of non-interference in order provide the Dominican people with the right to political self-determination.

5.2.3 Panama

The problems in Panama can be traced to the decision by Manuel Noriega, the commander of the Panamanian Defence Forces, to waive a govern in the favour of Colonel Florencio Aguilar. Noriega surged in influence and power, becoming dominant after promising to ensure civil liberties and stop political parties from participating in the management of the country.⁸²¹ In May 1989, Noriega held democratic elections for a second time as a result of pressure from the public, human rights organisations and the international community. The outcome of the election was unsatisfactory for Noriega, as his political opponent Guillermo Endara won the election.⁸²²

⁸¹⁹ Ved Nanda, *Tragedies in Somalia, Yugoslavia, Haiti, Rwanda and Liberia - Revisiting the Validity of Humanitarian Intervention under International Law*, *Denver Journal of International Law and Policy* (1998) Vol. 26, No. 5.

⁸²⁰ Russell Crandall, *Gunboat Democracy: The United States Interventions in the Dominican Republic, Grenada, and Panama*, Oxford: Rowman & Littlefield Publishers, 2006, pp 48-51.

⁸²¹ David Wippman, *Defending Democracy through Foreign Intervention*, *Houston Journal of International Law* (1997) Vol. 19, No. 3.

⁸²² Max Hilaire, *International law and the United States military intervention in the Western Hemisphere*, London: Kluwer Law International, 1997, p 118.

In response, Noriega cancelled the results of the elections and took control of the government by force, while President-elect Endara sustained injuries in attacks by groups close to Noriega. A few days later, Noriega declared himself the winner of the presidential election.⁸²³ The international community did not accept this anti-democratic coup, and US President George H.W. Bush stated that Noriega must honour the desires of Panamanian people and ensure the functioning of democracy. However, Noriega did not respond to these claims and international calls, and on 20 December 1989, the United States undertook a unilateral intervention in Panama involving approximately 28,000 troops under the justification of an invitation from Endara.⁸²⁴ The United States also announced its intention to stop drug smuggling, end a threat to US security and protect democracy, the Torrijos-Carter treaties and the Panama Canal. The United States launched the war under the codenamed 'Just Cause' as the Noriega regime declared war on the United States. A few weeks later, the United States announced the success of the military campaign and the arrest of Manuel Noriega.⁸²⁵

However, multiple parties of the international community denounced the US intervention. The OAS condemned the action in Resolution No. 1024 issued on 22 December 1989,⁸²⁶ and on 29 December 1989, the UN General Assembly approved resolution No 44/240, in which where 75 countries condemned the action and 40 objected, declaring it to be in violation of international law.⁸²⁷ The United States, France and the United Kingdom vetoed a Security Council resolution condemning the US invasion.⁸²⁸

However, the international community supported the interventions in Southern Rhodesia and the Dominican Republic, perhaps due to legal factors. The most important of these factors were as follows.

⁸²³ Max Hilaire, *United Nations Law And The Security Council*, Ashgate Publishing, 2005, p12; also see Security Council Resolution No. 208, August 1965.

⁸²⁴ Jan Hancock, *Human Rights and Us Foreign Policy*, London: Routledge, 2007, p221.

⁸²⁵ Karin von Hippel, *Democracy by Force: US Military Intervention in the Post-Cold War World*, Cambridge University Press, 2000, pp 31-42.

⁸²⁶ OAS, General Secretariat, resolution No. 1024, November 1989
<<http://www.oas.org/en/sla/docs/ag03803E01.pdf>> accessed 8 March 2013.

⁸²⁷ UN, General Assembly, resolution No. 44/240 (December 1989).

⁸²⁸ Max Hilaire, *United Nations Law And The Security Council*, Ashgate Publishing, 2005, p12. Also; UN, Security Council, Resolution No. 208 (August 1965).

1. The US justifications were broad and non-specific, and the lack of a specific reason to justify the intervention caused many parties of the international community to consider it a violation of the sovereignty of Panama. The United States defended its action as dealing with domestic security issues, including protecting the US borders from drug trafficking, maintaining the Torrijos-Carter Treaty and protecting the Panama Canal.⁸²⁹ The US also claimed that this intervention was intended to support and promote democracy based on an invitation from President-elect Endara.⁸³⁰ Therefore, the international interpretations and analyses naturally would be non-specific and varied because the US administration gave more than one reason to intervene and did not focus on ensuring the Panamanian people's democratic rights.
2. The US had no permission or legal justification to intervene, unlike the interventions in Southern Rhodesia and the Dominican Republic. This lack certainly made the international community more severely critical of this action. As well, the US administration did not give the Security Council sufficient opportunity to undertake legal procedures to resolve these issues before it intervened, and the US intervention was swift and surprising to some parties of the international community.

This intervention did achieve positive results in accordance with the international trend to protect of human rights, in particular to promote democracy.⁸³¹ Importantly, the legitimate Panama government had asked the United States to intervene in order to restore democracy.⁸³² It should be noted that the US intervention occurred after a coup and the cancellation of the official election results, although the threat to US security existed before the elections, particularly drug trafficking and danger to the Panama Canal. Consequently, the humanitarian aspects of the US motivations were more pronounced in its explanations for the intervention. This is evidenced in Bush's 20 December 1989 statement that the entry of US troops into Panama was intended to defend democracy and human rights.⁸³³

⁸²⁹ Max Hilaire, *International law and the United States military intervention in the Western Hemisphere*, London: Kluwer Law International, 1997, p 127. See also Lawrence Yates, *The U.S. military intervention in Panama: origins, planning, and crisis management*, June 1987-December 1989, Government Printing Office, 1998, p8.

⁸³⁰ Christine Gray, *International law and the use of force*, Oxford University Press, 2008, p91.

⁸³¹ Simon Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law*, Oxford University Press, 2001, p103.

⁸³² Christine Gray, *International law and the use of force*, Oxford University Press, 2008, p91.

⁸³³ Simon Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law*, Oxford University Press, 2001, p102.

Finally, the Cold War contributed to restricting international resolution by dividing the international community into two camps, and it made it difficult to strengthen the right of political self-determination in the presence of this division. This is because each camp would not allow the other camp to intervene in its satellite states, under the concept of the principle of non-interference. However, this period witnessed an effective interval to promote the right of political self-determination. During that period, in the cases that have been reviewed, the international desire to promote and support this right are clear, whether this was through the intervention of regional or international organizations or through a unilateral, such as what happened in Panama. In Southern Rhodesia, there was a clear strengthening of the right of the people of Southern Rhodesia in political self-determination by the Organization of African Unity and the United Nations. The same situation occurred in the Dominican Republic, where the Organization of American States and the United Nations sought to the end the illegal regime and restore this right for the Dominican people.

5.3 International practices to promote the right of political self-determination and the principle of non-interference after the end of the Cold War

During the Cold War, international practices have found a place in the rules of international law, especially in the field of human rights. However, those rights become pronounced and affirmation in the international community after the Cold War.⁸³⁴ International law in the post-Cold War era has seen significant progress, especially in the international decision-making mechanisms.⁸³⁵ The concept of international peace and security has become more inclusive of human rights and freedoms. In 1992, the Security Council held a first meeting of heads of state and issued a statement that recognised that:

The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters.⁸³⁶

In the wake of the Cold War, many international practices and interventions, such as those in Haiti and Libya, have endeavoured to promote the right to political self-determination. This chapter examines the importance of these international practices and interventions in the promotion of this intrinsic human right.

5.3.1. Haiti

In 1991, the leaders of Haiti decided to hold democratic elections in response to significant political struggles between 1988 and 1991. In 1990, a popular uprising forced against President Prosper Avril to resign and flee into exile. Hérard Abraham, a military commander, took control of the government but, a few months later, retired from the military and

⁸³⁴ International efforts to promote human rights have been strengthened since the end of the Cold War. For example, the establishment of the UN High Commission for Human Rights has enhanced the United Nations' international monitoring processes. The impact of non-governmental human rights organisations at the global level has increased, as has the interaction between supporters of these rights around the world. Thus, there is a new will within the international community to address systematic human rights violations.

⁸³⁵ Haopei Li, Sienho Yee, Tieya Wang, *International Law in the Post-Cold War World: Essays in Memory of Li Haopei*, London: Routledge, 2001, pp 18-240.

⁸³⁶ UN Security Council Summit, S/PV.3046 (31 January 1992) <<<http://daccess-dds-ny.un.org/doc/UNDOC/PRO/N92/601/98/PDF/N9260198.pdf?OpenElement>> accessed 16 March 2013.

government, handing power to President of the Constitutional Court Ertha Pascal-Trouillot.⁸³⁷ A few days later, Pascal-Trouillot called for the country's first democratic elections to be held. They took place in late 1990, resulting in a victory by Jean Bertrand Aristide with 67% of the vote.⁸³⁸

Two months later, on 6 January 1991, Roger Lafontant staged a military coup, which failed as a result of a standoff with several military commanders within the country's legitimate government. A second coup on the democratic and political legitimate Aristide government occurred in September 1991, led by General Raoul Cedras.⁸³⁹ This coup succeeded, and martial law was immediately imposed. In the first days of the coup, 3000 citizens were killed in the clashes. This coup led to Aristide's exit from the country and the imprisonment of Pascal-Trouillot, who had attempted to institute democracy in Haiti.⁸⁴⁰

The international community did not accept this coup against the legitimate, democratically elected government. The OAS was the first to act to defend democracy in Haiti.⁸⁴¹ Three days after military coup, the OAS held an urgent meeting which condemned the coup in Resolution 1/91 (1991).⁸⁴² The OAS demanded the immediate restoration of the rule of law, the democratic constitution and the legitimate government. The OAS called on its member states to sever all diplomatic relations with and isolate the coup-installed government.⁸⁴³

There is no doubt that the OAS's decision marked strong and uncharacteristically strong support of democracy and popular political rights.⁸⁴⁴ The OAS later issued Resolution No. 3/92 (1992), stating that efforts to restore Haiti's legitimate democratic government would not be limited to the OAS, but the OAS would raise the matter with the UN Human Rights Council at the UN. The resolution declared that the OAS would take all necessary and

⁸³⁷ Eirin Mobekk, *Enforcement of Democracy in Haiti*, *Democratization*, Volume 8, Issue 3, 2001, pp 173-188.

⁸³⁸ Karen A Feste, *Intervention: Shaping the Global Order*, London Praeger, 2003, p111.

⁸³⁹ Susan Marks, *What has Become of the Emerging Right to Democratic Governance?* *European Journal of International Law* (2011) Volume 22, Issue 2, pp. 507-524.

⁸⁴⁰ Eirin Mobekk, *Enforcement of Democracy in Haiti*, *Democratization* (2001) Volume 8, Issue 3, pp 173-188.

⁸⁴¹ John C Pierce, *The Haitian Crisis and the Future of Collective Enforcement of Democratic Governance*, *Law and Policy in International Business* (1996) Vol 27, No. 2.

⁸⁴² David Bentley, *Operation Uphold Democracy: Military Support for Democracy in Haiti*, *Institute for National Strategic Studies* (1996) Issue 78.

⁸⁴³ Ved Nanda, *Tragedies in Somalia, Yugoslavia, Haiti, Rwanda and Liberia - Revisiting the Validity of Humanitarian Intervention under International Law*, *Denver Journal of International Law and Policy* (1998) Vol. 26, No. 5.

⁸⁴⁴ John C Pierce, *The Haitian Crisis and the Future of Collective Enforcement of Democratic Governance*, *Law and Policy in International Business* (1996) Vol 27, No. 2.

possible measures to restore democracy in Haiti. The OAS's actions were the first specific threat against the military government in Haiti.⁸⁴⁵ In October 1991, the UN General Assembly responded to the OAS by passing resolution No. 7/46 condemning the illegal ouster of Haiti's president-elect, the use of military violence and the violation of human rights.⁸⁴⁶

However, the Cedras government did not react to these international resolutions and maintained its illegal power. Any citizen who demanded political rights was suppressed with brutality and excessive force. As Cedras's government became more dictatorial, the number of Haitian refugees grew. Most fled to the closest country, the US, which increased the complexity of the situation, especially in light of the OAS resolutions that sought to isolate the country.⁸⁴⁷

In late 1992, the international community began vigorous diplomatic attempts to resolve the crisis in order to spare the Haitian people the effects of economic sanctions and the use of military means. Aristide played a prominent role in these efforts, especially in the framework of the OAS. These efforts resulted in the US proposing an agreement that granted new democratic elections and amnesty and judicial immunity for the leaders of the military council.⁸⁴⁸

However, the military junta ignored the Washington Agreement, although it clearly would have easily resolved the crisis in Haiti. This response increased the anger of the international community. The United States then began to enact a new set of economic measures aimed at pressuring the Cedras government.⁸⁴⁹ This pressure led to a limited response by the military junta, accepting the OAS's invitation to participate in a meeting on Governors Island. The junta sent a delegation to this meeting and signed the terms of the agreement.⁸⁵⁰

⁸⁴⁵ OAS Document MRE/RES. 3/92 (17 May 1992).

⁸⁴⁶ UN, General Assembly, resolution No. 46/7 (October 1991).

⁸⁴⁷ Karin von Hippel, *Democracy by Force: US Military Intervention in the Post-Cold War World*, Cambridge University Press, 2000, pp 173-174.

⁸⁴⁸ Ved Nanda, *Tragedies in Somalia, Yugoslavia, Haiti, Rwanda and Liberia - Revisiting the Validity of Humanitarian Intervention under International Law*, *Denver Journal of International Law and Policy*, Vol. 26, No. 5.

⁸⁴⁹ Sarah E. Krepsa, *The 1994 Haiti intervention: A unilateral operation in multilateral Clothes*, *Journal of Strategic Studies* (2007) Volume 30, No. 3.

⁸⁵⁰ Max Hilaire, *International law and the United States military intervention in the Western Hemisphere*, London : Kluwer Law International, 1997,p 9.

Unfortunately, Cedras did not implement any of the items in the agreement, leading to the collapse and failure of the Governors Island agreement.⁸⁵¹

In June 1993, the UN Security Council issued resolution No. 841 (1993)⁸⁵² imposing a comprehensive ban on oil imports and the sale of weapons and tools used in the manufacturing of weapons to Haiti. In addition, the resolution expressed the council's dismay that the international community efforts to restore democracy and the legitimate government of President-elect Aristide had not borne fruit.⁸⁵³ It must be pointed out that during the council's discussion of this resolution, France, Canada, and Venezuela called for a comprehensive ban on all exports and imports to Haiti. The United States rejected this proposal and agreed only to a partial ban that would not have a large an impact on Haitian citizens.⁸⁵⁴

The Security Council repeated its demands upon the international community in subsequent resolutions—Nos. 861 (1993),⁸⁵⁵ 862 (1993),⁸⁵⁶ 875 (1993),⁸⁵⁷ 905 (1994)⁸⁵⁸ and 917 (1994).⁸⁵⁹ All those resolutions condemned the rejection of political rights and democratic legitimacy and urged the military group to peacefully resolve the situation to avoid hurting the Haitian people and risking collective international economics sanctions. Despite these actions by the OAS, General Assembly and Security Council, the military government continued to hold hegemony over Haiti.⁸⁶⁰

In July 1994, the Security Council issued resolution No. 940 (1994),⁸⁶¹ which became famous for clearly calling for military intervention to restore Haiti's democratic, legitimate government. The resolution condemned the government installed by the military coup and its

⁸⁵¹ Brian Lepard, *Rethinking Humanitarian Intervention: A Fresh Legal Approach Based on Fundamental Ethical Principles in International Law and World Religions*, Pennsylvania State University Press, 2002, pp 17-18.

⁸⁵² UN, Security Council, Resolution No. 841 (June 1993).

⁸⁵³ Erika De Wet, *The Chapter VII Powers of the United Nations Security Council*, Hart Publishing, 2004, pp 158-159.

⁸⁵⁴ Sarah E. Krepsa, *The 1994 Haiti intervention: A unilateral operation in multilateral Clothes*, *Journal of Strategic Studies*, Volume 30, Issue 3, 2007.

⁸⁵⁵ UN, Security Council, Resolution No. 861 (August 1993).

⁸⁵⁶ UN, Security Council, Resolution No. 862 (August 1993).

⁸⁵⁷ UN, Security Council, Resolution No. 875 (October 1993).

⁸⁵⁸ UN, Security Council, Resolution No. 905 (March 1994).

⁸⁵⁹ UN, Security Council, Resolution No. 917 (March 1994).

⁸⁶⁰ Dwight Murphey, *The Post-Cold War American Interventions into Haiti, Somalia, Bosnia and Kosovo*, *The Journal of Social, Political, and Economic Studies* (2000) Vol. 25, No. 4.

⁸⁶¹ UN, Security Council, Resolution No. 940 (July 1994).

continued insistence on ignoring the previous UN resolutions, international conventions and international efforts to find a peaceful solution. The resolution stressed that the goal of these resolutions and international conventions was to restore both democracy and legitimately elected President Jean Aristide. The fourth paragraph of the resolution gave the international community legal permission to form a multinational force and carry out military intervention in order to restore democracy and the denied rights of the Haitian people.⁸⁶²

In addition, the tenth paragraph of resolution No. 940 (1994) addressed the right of political self-determination by inviting international forces and a team of observers and various UN organs to assist in organising free and fair elections under the auspices of the UN and OAS, who would cooperate to create an environment appropriate for elections. The resolution's fifth paragraph authorises the formation of a control group of 60 to coordinate with the monitoring international forces and order to implement the international community's desire to restore democracy.⁸⁶³

President Bill Clinton gave US forces the green light to participate in the operations, contributing the largest contingent of a 20,000-strong military force.⁸⁶⁴ On 19 September 1994, the multinational force began operations with 19 countries participating, including Australia, Argentina, Bolivia, the Netherlands, and Britain, with logistical support from other countries.⁸⁶⁵ On 15 October multinational forces announced the end of military operations.⁸⁶⁶ On the same day, the legitimate president Jean Aristide returned to Haiti on US military after three years of forced exile and the denial of his constitutional right to rule.⁸⁶⁷

The United States effectively supported democracy in Haiti, establishing itself States as the source of democratic discourse in international interventions in South America. This followed the pattern established by US action in Panama, the Dominican Republic, Grenada, and

⁸⁶² Ibid.

⁸⁶³ Max Hilaire, *United Nations Law And The Security Council*, Ashgate Publishing, 2005, p70.

⁸⁶⁴ Eirin Mobekk, *Enforcement of Democracy in Haiti*, *Democratization* (2001) Volume 8, Issue 3, pp 173-188.

⁸⁶⁵ John C Pierce, *The Haitian Crisis and the Future of Collective Enforcement of Democratic Governance*, *Law and Policy in International Business* (1996) Vol 27, No. 2.

⁸⁶⁶ Karin von Hippel, *Democracy by Force: US Military Intervention in the Post-Cold War World*, Cambridge University Press, 2000, pp 173-174.

⁸⁶⁷ John C Pierce, *The Haitian Crisis and the Future of Collective Enforcement of Democratic Governance*, *Law and Policy in International Business* (1996) Vol 27, No. 2.

Nicaragua.⁸⁶⁸ However, the US acted in Haiti with legal permission from the Security Council, whereas US intervention to support democracy in Panama and Grenada was conducted unilaterally.⁸⁶⁹ The ease of the democratic intervention in Haiti was perhaps due to the UN Security Council's flexibility in issuing international resolutions after the Cold War.⁸⁷⁰ One must also not lose sight of the fact that Clinton had clearly stated during his election campaign that supporting democracy and human rights is the highest priority for the president of the United States.⁸⁷¹

The OAS similarly played a prominent role in supporting democracy in Haiti and other countries, such as the Dominican Republic.⁸⁷² This support originates from the Declaration of Principles issued at the Summit of the Americas, proclaiming that democracy is the only political system which guarantees respect for human rights and the rule of law. As well, there is the conviction that holding free and fair elections is essential to protecting human rights because it represents mutual respect for all those within a state.⁸⁷³

The cooperation and participation of the international community in the implementation of the UN, OAS and US resolutions involving was unprecedented in international interventions to strengthen democracy. Even Cuba, which represents the socialist bloc and does not have a real democracy, joined other Security Council members in voting to approve resolution No. 940.⁸⁷⁴ Countries that participated in the international sanctions sent clear signals to the target state in particular and to the international community in general that a coup against democracy is unacceptable.⁸⁷⁵

⁸⁶⁸ David Bentley, *Operation Uphold Democracy: Military Support for Democracy in Haiti*, Institute for National Strategic Studies (1996) Issue 78 .

⁸⁶⁹ Simon Chesterman, *Just War or Just Peace?: Humanitarian Intervention and International Law*, Oxford University Press, 2001, p83.

⁸⁷⁰ Karin von Hippel, *Democracy by Force: US Military Intervention in the Post-Cold War World*, Cambridge University Press, 2000, p39.

⁸⁷¹ Tony Smith, *America's Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century*, Princeton University Press, 1994, p 324.

⁸⁷² Karin von Hippel, *Democracy by Force: US Military Intervention in the Post-Cold War World*, Cambridge University Press, 2000, p102.

⁸⁷³ Morton Halperin, Mirna Galic, *Protecting Democracy: International Responses*, Lexington Books, 2005, p311.

⁸⁷⁴ John C Pierce, *The Haitian Crisis and the Future of Collective Enforcement of Democratic Governance*, *Law and Policy in International Business* (1996) Vol 27, No. 2.

⁸⁷⁵ Karin von Hippel, *Democracy by Force: US Military Intervention in the Post-Cold War World*, Cambridge University Press, 2000, p39.

The element of cooperation achieved in these international alliances played a prominent role in the implementation of strategic goals for international interventions. If a state were convinced that this matter did not contradict international law, it would be impossible to undertake physical and military intervention.⁸⁷⁶ The measures taken by the international community demonstrated how this situation exceeded traditional stages in international law and reflected intellectual changes. The method of dealing with the crisis in Haiti showed importance of developing an effective mechanism in international law to strengthen democracy worldwide.⁸⁷⁷

By following UN Security Council resolution No. 940, the international community effectively eliminated a perceived threat to international peace and security. This demonstrated the council's ability to develop new standards focused on the welfare of human beings. The aim of the international intervention in Haiti was not to alter political or economic beliefs but, rather, to change the ruling regime and enable the Haitian people to exercise their right to democratic, free, fair elections under international supervision. These facts suggest that the principle of non-intervention was ineffective and did not affect the promotion of the right to political self-determination.

5.3.2 Sierra Leone

The history of the conflict in Sierra Leone dates to March 1991, when the Revolutionary United Front (RUF) from the country's east of the country, near the border with Liberia, launched an attempt to overthrow the civilian government. The Sierra Leonean army engaged in a fierce war against the RUF lasting for a full year. The civilian government and the Sierra Leone army found support from the Economic Community of West African States (ECOWAS).⁸⁷⁸

⁸⁷⁶ The state's relationship with its citizens is no longer solely internal; thus, the state cannot prevent other countries from interfering in its internal affairs, especially if the state's behaviour towards its citizens leads to humanitarian disasters. The importance of the traditional concept of national sovereignty, which was an obstacle to international intervention to protect and promote human rights, has begun to decline in the face of the international community's attention to those issues. In addition, we recognize the need to respect the authorities in a state and the rights of its citizens while still paying attention to cases of humanitarian, political, economic and social injustice.

⁸⁷⁷ Peter Malanczuk, Akehurst's Modern Introduction to International Law, London: Routledge, 2002, pp 408-409.

⁸⁷⁸ 'Sierra Leone—UNAMSIL—Background' (UN 2005)
<<http://www.un.org/en/peacekeeping/missions/past/unamsil/background.html>> accessed 14 March 201.

After a relatively short period, military leaders overthrew the civilian government in a coup. However, this did not stop the fighting or bring stability to the people of Sierra Leone.⁸⁷⁹ In mid-1995, the UN and the OAS called for free and fair elections in an attempt to achieve a comprehensive peace through democracy. In February 1996, the organisation of democratic elections resulted in the victory of Ahmed Tejan as president and removed the army removed from power. However, the RUF did not participate in the elections and later announced that it did not recognise the results, resulting in the continuation of fighting.⁸⁸⁰

The UN and OUA again tried to stop the fighting between the army and the RUF. On 20 November 1996, a peace agreement was signed in Abidjan between President Tejan and RUF leader by Foday Sankoh in an attempt to restore democratic legitimacy.⁸⁸¹ According to the terms of the Convention Abidjan, UN Secretary-General Annan suggested a comprehensive peace plan, which included a roadmap to get out of the crisis. The plan would last 8 months and required sending 720 soldiers, 60 military observers and 276 civilian employees at a cost of \$47 million.⁸⁸²

However, the agreement was derailed by another military coup by the Army in concert with the RUF.⁸⁸³ President Tejan was ousted, and his government sent into exile in Guinea.⁸⁸⁴ The UN sent special emissaries, including Francis Okelo and other representatives of the international community, to negotiate with the junta in Sierra Leone, but they failed to persuade the junta to give up power and return power to Tejan.⁸⁸⁵

⁸⁷⁹ Abass Bundu, *Democracy by Force?: (a Study of International Military Intervention in the Civil War in Sierra Leone from 1991-2000)*, Universal Publishers, 2001, pp 26-27.

⁸⁸⁰ International Commission on Intervention and State Sovereignty, *International Development Research Centre, The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* ; December 2001, International Development Research Centre, 2001. , pp 104-110.

⁸⁸¹ Peter Dumbuya, *ECOWAS Military Intervention in Sierra Leone: Anglophone-Francophone Bipolarity or Multipolarity?* *Journal of Third World Studies* (2008) Vol. 25, No. 2.

⁸⁸² Karsten Nowrot, Emily W. Schbacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, *American University International Law Review* (1998) Vol. 14, No.2.

⁸⁸³ Abass Bundu, *Democracy by Force?: (a Study of International Military Intervention in the Civil War in Sierra Leone from 1991-2000)*, Universal Publishers, 2001, p257 .

⁸⁸⁴ Melissa Labonte, *Human Rights and Humanitarian Norms, Strategic Framing, and Intervention: Lessons for the Responsibility to Protect*, London: Routledge, 2013, p 131.

⁸⁸⁵ Simon Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building*, Oxford University Press, 2005, p160.

The Organisation of African Unity condemned the military coup and explicitly called for the restoration of democracy. In the final statement from the 1997 summit Harare, the Council of Respect for Constitutional Legality in Sierra Leone called for a quick end to the crisis and the restoration of democracy. In the same vein, ECOWAS formed a pentagonal committee to seek to restore democracy in Sierra Leone.⁸⁸⁶ On 23 October 1997, the committee met with the military council in Conakry and later announced the signing of a ceasefire agreement. On 5 November 2006, Tejan issued a statement accepting the agreement and announcing his government's readiness to cooperate with ECOWAS and the UN.⁸⁸⁷

However, the junta abandoned its commitment to the agreement, later protesting some terms, although they already signed the agreement.⁸⁸⁸ Moreover, the junta did not stop at this, but continued to affect the points outside the framework of the agreed peace.⁸⁸⁹ UN Security Council resolution No. 1132 (1997)⁸⁹⁰ condemned the delays by the military government in Sierra Leone⁸⁹¹ and praised the Organisation of African Unity's and ECOWAS's efforts towards peace.⁸⁹²

Furthermore, the resolution demanded that economic sanctions be imposed on the military government, banning oil exports to Sierra Leone and trade with ships and aircraft flying the flag of Sierra Leone. In addition, the Security Council imposed a travel ban on members of the junta military and their families.⁸⁹³ Note that the Security Council resolution gave legal recognition to the ECOWAS's initiative in the Conakry Agreement. This cooperation evidences a widespread international desire to restore a legitimate democracy in Sierra Leone.

⁸⁸⁶ Abdulqawi Yusuf, Fatsah Ougergouz, *The African Union: Legal and Institutional Framework: A Manual on the Pan-African Organization*, Nijhoff Publishers, 2012, pp 252-254.

⁸⁸⁷ Karsten Nowrot, Emily W. Schbacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, *American University International Law Review* (1998) Vol. 14, No.2.

⁸⁸⁸ Peter Dumbuya, *ECOWAS Military Intervention in Sierra Leone: Anglophone-Francophone Bipolarity or Multipolarity?* *Journal of Third World Studies* (2008) Vol. 25, No. 2.

⁸⁸⁹ Mawuena Kwaku, *ECOWAS' Role as a Security Organization: The Case of Sierra Leone*, University of Saskatchewan, A Thesis Submitted to the College of Graduate Studies and Research, 2012

⁸⁹⁰ UN, Security Council, Resolution No. 1132 (October 1997).

⁸⁹¹ *Ibid.*

⁸⁹² *Ibid.*

⁸⁹³ *ibid.*

While UN Security Council resolution No. 1132 (1997) did not give international states permission to intervene militarily, it nevertheless supported the restoration of democracy through means consistent with the requirements of the crisis. These steps also needed to be approved by the ECOWAS as the actor closest to and most knowledgeable of the conditions of the region and the particular circumstances of the dispute.⁸⁹⁴ Thus, all possibilities became available, enabling the Security Council to intervene should the military coup government fail to respond. In the case of an African group calling for military intervention, the UN Security Council would intervene whenever the conditions were suitable. Indeed, the ECOWAS continued to work to undermine Sierra Leone's economy by imposing a strict blockade on the junta military. At the same time, the ECOWAS reviewed its military strength and readiness for all eventualities.⁸⁹⁵

ECOWAS did not depend on the UN Security Council for legal legitimacy but, rather, derived it from a protocol establishing the group which Sierra Leone signed in 1975.⁸⁹⁶ ECOWAS's protocols emphasised that security is vital to create a suitable economic environment for the people of the ECOWAS and to achieve economic efficiency and comfort.⁸⁹⁷ The additional Protocol of 1995, for example, aimed to create collective security for the peoples of the region, respect their rights and establish a conflict prevention mechanism.⁸⁹⁸

It is uncertain whether ECOWAS's intervention in Sierra Leone violated international law. Strong legal evidence enabled the group to conduct such measures with the approval of the UN Security Council. As well, Sierra Leone was a founding member of ECOWAS, and therefore, its government was required to ECOWAS's decisions. In signing the ECOWAS Foundation protocols, Sierra Leone implicitly and explicitly acknowledging giving up some internal sovereignty in order to work within the framework of a collective.⁸⁹⁹ Thus, issues of

⁸⁹⁴ Max Hilaire, *United Nations Law and the Security Council*, Ashgate, 2005, p.278

⁸⁹⁵ Peter Dumbuya, *ECOWAS Military Intervention in Sierra Leone: Anglophone-Francophone Bipolarity or Multipolarity?* *Journal of Third World Studies* (2008) Vol. 25, No. 2.

⁸⁹⁶ Andrew McGregor, *Quagmire in West Africa: Nigerian Peacekeeping in Sierra Leone (1997-1998)* *International Journal* (1999) Vol. 54, No. 3.

⁸⁹⁷ Mawuena Kwaku, *ECOWAS' Role as a Security Organization: The Case of Sierra Leone*, University of Saskatchewan, A Thesis Submitted to the College of Graduate Studies and Research, 2012.

⁸⁹⁸ Economic Community of West African States (ECOWAS), 'The Protocol Relating to the Mechanism for Conflict Prevention, Management, Res, Peace-Keeping and Security' (ECOWAS December 1999).

⁸⁹⁹ Mawuena Kwaku, *ECOWAS' Role as a Security Organization: The Case of Sierra Leone*, University of Saskatchewan, A Thesis Submitted to the College of Graduate Studies and Research, 2012.

concern to the people of Sierra Leone also interested the ECOWAS. Consequently, the ECOWAS focused in supporting the Sierra Leone people's efforts to restore democracy, achieve social justice and enjoy public freedoms.

In the next phase of the crisis, the ECOWAS continued to cooperate with the Organisation of African Unity and the UN.⁹⁰⁰ Thus began new negotiations spearheaded by the foreign affairs ministers of Ghana, Guinea and Nigeria to defuse the crisis and spare the people of Sierra Leone the effects of the crisis, exacerbated by military options.⁹⁰¹ However, the junta continued to not –comply, ignored the voices of African and international forces and resisted international sanctions.⁹⁰² It also continued fighting with Kamajors forces arose after the military coup. The Kamajors forces were stationed in rural areas and received military support from Niger and Liberia. As the battles escalated, the humanitarian crisis worsened, and soon, there were severe food shortages, especially in rural areas.⁹⁰³ These circumstances drove the ECOWAS to escalate to initiate more violent solutions, such as military means.⁹⁰⁴

The ECOWAS intervened militarily intervened in February 1998, and Nigerian troops arrested the leaders of the military junta and the RUF fighters. A month later, Tejan returned to Sierra Leone and took his office. The international community succeeded in restoring democracy to Sierra Leone through international cooperation in financial, military, logistical and diplomatic matters.⁹⁰⁵

In April 1998, UN Security Council resolution No. 1156 (1998)⁹⁰⁶ welcomed the return of the democratically elected president. The council praised the ECOWAS's efforts to restore security and peace to Sierra Leone, demonstrating that the council did not oppose the military

⁹⁰⁰ Abass Bundu, *Democracy by Force?: (a Study of International Military Intervention in the Civil War in Sierra Leone from 1991-2000)*, Universal Publishers, 2001, p93.

⁹⁰¹ Ibrahim Abdullah, *Between Democracy and Terror: the Sierra Leone Civil War*, Council for the Development of Social Science Research in Africa, 2004, p225.

⁹⁰² Karsten Nowrot, Emily W. Schbacker, *The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone*, *American University International Law Review* (1998) Vol.14, No. 2.

⁹⁰³ UN, Sierra Leone - UNAMSIL – Background
<<http://www.un.org/en/peacekeeping/missions/past/unamsil/background.html>> accessed 14 March 2013.

⁹⁰⁴ William J. Lahneman, *Military Intervention: Cases in Context for the Twenty-first Century*, Rowman & Littlefield, 2004, pp. 141-144.

⁹⁰⁵ Peter Dumbuya, *ECOWAS Military Intervention in Sierra Leone: Anglophone-Francophone Bipolarity or Multipolarity?* *Journal of Third World Studies* (2008) Vol. 25, No. 2.

⁹⁰⁶ UN, Security Council, Resolution No. 1156 (March 1998) .

measures.⁹⁰⁷ Even within the ECOWAS, there was no opposition to the military procedures by its members.⁹⁰⁸

It can be argued that UN Security Council resolution No. 1156 did not legitimise ECOWAS's role in the restoration of democracy, instead simply stated that the ECOWAS had achieving security and peace in Sierra Leone.⁹⁰⁹ However, the first paragraph of the resolution explicitly stipulates that the Council welcomes the return of the legitimate and democratically elected government. This is clear recognition from the council that the objectives of the intervention were to restore democracy in any shape and orientation. More importantly, in the sixth paragraph of the resolution, the council promised to continue to cooperation with the group in operations to maintain the security of the democratic government in Sierra Leone.

In this context, it should be noted that Security Council resolution No. 1156 ended the economic embargo imposed on Sierra Leone in Security Council resolution No. 1123. And there, the Council clearly described the international efforts, particularly by the ECOWAS, as aimed at restoring democracy in Sierra Leone. Thus, resolution Nos. 1165 and 1132 are linked in matter and form.

Notably, the international community treated the use of military force cautiously. Initially, strong diplomatic attempts were made to restore democracy, followed by the application of economic sanctions. Only when these approaches failed did the international community resort to the use of military force. This pattern mirrors events in Haiti, except Haiti resulted in a clear decision to explicitly permit the use of armed force. However, the Security Council supported the ECOWAS's use of military force, giving it legal recognition through resolution No. 1165.⁹¹⁰

There is no doubt that these measures and decisions aimed to restore the right of political self-determination to the people of Sierra Leone. However, in another sense, they was not

⁹⁰⁷ *ibid.*

⁹⁰⁸ Jeremy Levitt, Pro-Democratic Intervention in Africa, *Wisconsin International Law Journal*, Vol. 24, No. 3, 2006.

⁹⁰⁹ Karsten Nowrot, Emily W. Schbacker, The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone, *American University International Law Review* (1998) Vol.14, No. 2.

⁹¹⁰ Karsten Nowrot, Emily W. Schbacker, The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone, *American University International Law Review* (1998) Vol.14, No. 2.

consistent with the principle of non-interference. This means that the Organization of ECOWAS and the African governments, who went on to override the principle of non-interference, did not consider that the principle had a legal value. The most exciting was how the Security Council welcomed the results of these interventions through Resolution No. 1156 (1998).⁹¹¹

5.3.3 Libya

Gaddafi became leader of Libya in 1969 and ruled for 42 years. During these four decades, he is widely believed to have suppressed civil liberties with international and local recognition of these abuses of human rights.⁹¹² This regime was not the only dictatorship in the Middle East, where many governments acted similarly and brutally suppressed their people's rights.⁹¹³ Consequently, in late 2010, the Middle East experienced an outbreak of civil conflict collectively known as the Arab Spring, in which many populations across the region rose up against dictatorships. Those revolutions began in Tunisia on 17 December when fruit seller Mohamed Bouazizi burned himself in front of the police station after the unlawful confiscation of his fruit cart by officials.⁹¹⁴

Subsequently, the Tunisian people rose up against the government of President Zine El Abidine Ben Ali, led by intellectuals and those interested in human rights and labour movements. Within a few months of the uprising, the Tunisian people succeeded in removing the repressive regime that had been the norm for more than 20 years.⁹¹⁵ Following the Tunisian uprising, the peoples from other countries of the region began to move against their ruling dictatorships. In the second phase of the popular democratic movement, both Libya

⁹¹¹ UN, Security Council, Resolution No. 1156 (March 1998).

⁹¹² James Pattison, *The Ethics of Humanitarian Intervention in Libya*, *Ethics & International Affairs* (2011) Vol. 25, No. 3, pp 271-277.

⁹¹³ Jon Western, *Selling Intervention And War: The Presidency, The Media, And The American Public*, JHU Press, 2005, p91.

⁹¹⁴ Joel Peters, *The European Union and the Arab Spring: Promoting Democracy and Human Rights in the Middle East*, Lexington Books, 2012, pp 34-56.

⁹¹⁵ Efraim Inbar, *The Arab Spring, Democracy and Security: Domestic and international ramifications*, Routledge, 2013, p2.

and Yemen saw successful popular protest movements to remove dictators. The movement spread, next arriving in Syria.⁹¹⁶

The revolutions in Egypt and Yemen did not result in a truly international intervention because their armies remained neutral. Even the political upper classes did not directly support dictatorial governments.⁹¹⁷ However, there have been international calls to support the aspirations and wishes of the peoples. For example, on 30 January 2011, US Secretary of State Hillary Clinton called for the protesters organisers to be converted into the ruling regime in Egypt.⁹¹⁸ On 31 January, Catherine Ashton, an EU High Representative for Foreign and Security Affairs in the EU, called on Mubarak to engage in immediate dialogue with the opposition and respond to the aspirations of anti-government protesters.⁹¹⁹ Similarly, on 1 February, Turkish President Recep Tayyip Erdogan urged Mubarak to step down and let the Egyptian people decide their political fate.⁹²⁰

There were similar international calls for the abdication of President Ali Abdullah Saleh of Yemen.⁹²¹ However, this time a pivotal role was played by the UN Security Council played a pivotal, issuing resolution No. 2014 calling for Saleh to step down and ensure the transfer of power in a peaceful, democratic, free and fair elections.⁹²² Earlier, there had been international requests for Saleh to resign in response to the desire of the Yemen people, as US President Barack Obama urged on 28 July 2012.⁹²³ That same day, British Foreign Secretary

⁹¹⁶ Amy Eckert, *The Responsibility to Protect in the Anarchical Society: Power, Interest, and the Protection of Civilians in Libya and Syria*, *Denver Journal of International Law and Policy* (2012) Vol.41, No. 1.

⁹¹⁷ Toby Manhire, *The Arab Spring: Rebellion, Revolution, and a New World Order*, Guardian Books, 2012, p 122.

⁹¹⁸ Tom Cohen, 'Clinton Calls for a Peaceful Transition to Democracy in Egypt (CNN 30 January 2011) <<http://edition.cnn.com/2011/WORLD/meast/01/30/us.egypt/index.html>> accessed 25 March 2013.

⁹¹⁹ 'EU Wary of Extremism in Egypt (Euronews 31 January 2011) <<http://www.euronews.com/2011/01/31/eu-wary-of-extremism-in-egypt/>> accessed 25 March 2013.

⁹²⁰ 'Turkish PM Erdoğan Urges Mubarak to Heed Egyptian Outcry, (Hurriyet Daily News 2 January 2011) <<http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=turkey-calls-on-mubarak-to-heed-calls-for-change-2011-02-01>> accessed 26 March 2013.

⁹²¹ Marwa Rashad, 'Yemen's Saleh Signs Deal to Give up Power' (Reuters, 23 November 2011) <<http://www.reuters.com/article/2011/11/23/us-yemen-idUSTRE7AM0D020111123>> accessed 25 March 2013.

⁹²² UN, Security Council, Resolution No. 2014 (October 2011).

⁹²³ Readout of President's Call with President Saleh of Yemen' (WhiteHouse.gov 3 February 2011) <<http://www.whitehouse.gov/the-press-office/2011/02/03/readout-presidents-call-president-saleh-yemen>> accessed 25 March 2013.

William Hague asserted that Saleh must fulfil his international obligations to realise the Yemeni people's desire to transfer power through democratic means.⁹²⁴

Note that the Security Council has given important legal support democracy in Yemen but not in Egypt. However, all of those international calls to support the popular revolts and achieve the wishes of the people represent legal recognition by the international community of the political rights of peoples. In particular, the right of the peoples to access democracy forms the basis for the achievement of social justice and human freedom. Thus, peoples should have access to a system that respects and promotes human rights.

The situation of the Libyan people differs from that of their counterparts in Egypt, Yemen and Tunisia because they experienced real economic and military international intervention⁹²⁵ because the Gaddafi regime responded to the popular uprising with repression, murder and torture. The regime committed grave violations of human rights in Libya, which led the international community to condemn the regime for these violations.⁹²⁶

A revolution broke out 15 February 2012 after a peaceful demonstration in Benghazi calling for the release of Fathi Terbil, a lawyer of families of those incarcerated the political Abu Saleem prison.⁹²⁷ The majority of demonstrators were relatives of prisoners in Abu Saleem and demanded the immediate release of the prisoners and Terbil. They also wanted to know the location of victims' bodies and the prosecution of those responsible for their deaths. The demonstration escalated into a violent clash with regime forces that faced protesters with repression and arrest. The demonstrators used stones and Molotov cocktails to defend themselves, and the first day of the revolution ended 38 deaths among the demonstrators.⁹²⁸

The government released Terbil and promised to free 110 other prisoners detained at Abu Salim for a few days. That same day, demonstrations took place in al-Bayda, asserting

⁹²⁴ EU Wary of Extremism in Egypt (Euronews 31 January 2011) <<http://www.euronews.com/2011/01/31/eu-wary-of-extremism-in-egypt/>> accessed 25 March 2013.

⁹²⁵ James Pattison, *The Ethics of Humanitarian Intervention in Libya*, *Ethics & International Affairs* (2012) Vol. 25, No. 3, pp 271-277.

⁹²⁶ Christopher Chivvis, *Libya and the Future of Liberal Intervention*, *Survival: Global Politics and Strategy* (2012) Vol. 54, No. 6, pp 69-92.

⁹²⁷ Jon Western, *Selling Intervention And War: The Presidency, The Media, And The American Public*, JHU Press, 2005, p36.

⁹²⁸ Jean-Pierre Filiu, *The Arab Revolution: Ten Lessons from the Democratic Uprising*, Oxford University Press, 2011, pp 85-86.

stronger claims than the families of the Abu Saleem prisoners. These demands included the ouster of Gaddafi. In those demonstrations, three protesters were killed, and more than 200 were wounded.⁹²⁹

On 17 February, a popular revolt was fully launched, labelled a Libya's day of rage in cities across the country. Demonstrations took place in Benghazi, Tobruk, Derna, Ajdabiya, Kufra and Zintan. The regime continued to repress the demonstrations and use excessive force to try to control the popular revolution in Libya.⁹³⁰ These events quickly evolved into violent confrontations, and demonstrators burned several government buildings in Benghazi. The death toll stood at 49 on this day alone. Libyan authorities began a series of arrests in Tripoli in anticipation of similar protests. At least 14 activists were arrested.⁹³¹ The next day, a march in Benghazi mourned the dead from the previous two days; then, commandos fired upon the protesters with heavy weapons and anti-aircraft weapons, killing more than 300. In addition, al-Bayda saw nearly 150 people dead, and another person was killed in Misrata during the disbursement of a demonstration. On 20 February, unrest continued in Benghazi, with tens of thousands of demonstrators taking to the streets. They were met by the forces of the regime, with 50 protestors killed.⁹³²

After these clashes between government forces and demonstrators demanding civil and political rights and directed by detainees, some politicians and military teams announced that they were joining the popular revolt. Then, a number of government officials left, protesting the suppression of the Libyan people. Six Libyan ambassadors resigned, including Libya's permanent representative to the Arab League.⁹³³

Several Libyan tribes similarly announced that they would support those demands and denounced the military force exerted in response to the popular demonstrations in various

⁹²⁹ Jo Becker, *Campaigning for Justice: Human Rights Advocacy in Practice*, Stanford University Press, 2012, pp 146-148.

⁹³⁰ Jean-Pierre Filiu, *The Arab Revolution: Ten Lessons from the Democratic Uprising*, Oxford University Press, 2011, p54.

⁹³¹ Amy Eckert, *The Responsibility to Protect in the Anarchical Society: Power, Interest, and the Protection of Civilians in Libya and Syria*, *Denver Journal of International Law and Policy* (2012) Vol.41, No. 1.

⁹³² Karen Dabrowska, *The Libyan Revolution: Diary of Qadhafi's Newsgirl in London*, Author House, 2012, pp 41-49. Also, Toby Manhire, *The Arab Spring: Rebellion, Revolution, and a New World Order*, Guardian Books, 2012, pp 18-25

⁹³³ Toby Manhire, *The Arab Spring: Rebellion, Revolution, and a New World Order*, Guardian Books, 2012, pp 20-45.

parts of Libya.⁹³⁴ The clashes escalated, with the regime using heavy weapons against and bombing demonstrations and besieging Benghazi with tanks, artillery and rockets. Zintan witnessed fierce battles between rebels and government forces. One week after the popular uprising began, Gaddafi appeared on television threatening the revolutionaries and protesters with severe punishment.⁹³⁵

Human rights organisations condemned the excessive use of force by Libyan authorities, and the AU and Arab League condemned the systematic repression and gross violation of human rights. The Arab League played an important role in urging the international community to consider the Libyan case and raised the issue with the UN Security Council.⁹³⁶ The 26 February 2011, Security Council resolution No. 1970 (2011)⁹³⁷ condemned the systematic attacks against Libyan people and noted very clearly that they amounted to crimes against humanity. The resolution referred the situation in Libya to the ICC under Article 16 of the Rome Statute. Moreover, the resolution imposed a comprehensive ban on arms exports to Libya and a travel ban on a number of suspects in human rights violations.⁹³⁸

Less than a month later, the Security Council issued resolution No. 1973 (2011)⁹³⁹ authorising the international community to take all necessary measures to protect civilians and populated areas, provided that there were no foreign occupation force. The resolution also imposed a no-fly zone over Libyan airspace to protect civilians and legally permitted member states to enforce the ban by military force within Libyan airspace. As well, the resolution expanded economic sanctions on the Libyan government, freezing Libyan assets in financial institutions and prohibition transactions with the Central Bank of Libya.⁹⁴⁰

⁹³⁴ Ibid.

⁹³⁵ Spencer Zifcak, *The Responsibility to Protect after Libya and Syria*, *Melbourne Journal of International Law*, (2012) Vol. 13, No. 1. Also, Toby Manhire, *The Arab Spring: Rebellion, Revolution, and a New World Order*, Guardian Books, 2012, pp 20-45.

⁹³⁶ Geir Ulfstein, *The Legality of the NATO Bombing in Libya*, *International and Comparative Law Quarterly* (2013) Vol. 62, No. 1, pp. 159-171.

⁹³⁷ UN, Security Council, Resolution No. 1970 (February 2011).

⁹³⁸ Ibid.

⁹³⁹ UN, Security Council, Resolution No. 1973 (March 2011).

⁹⁴⁰ Ibid.

Note that this resolution assigns the responsibility to protect civilians not only to Libyan authorities but also to the international community.⁹⁴¹ This is a clear legal recognition that the Security Council does not embrace the doctrine of national protection but, rather, distributes this responsibility throughout the international community under the framework of collective security and collective responsibility.⁹⁴² In addition, the council response quickly to the Libyan situation and passed a resolution on 17 March 2011, just one month after the start of the popular protests and their suppression.⁹⁴³ This speed is proof that the model of intervention goes beyond cases of self-defence and that the Security Council is concerned with the protection and promotion of human rights.⁹⁴⁴

The international community reacted swiftly to the UN Security Council and began military operations to enforce a no-fly zone. On 19 March 2011, international forces led by the North Atlantic Treaty Organisation (NATO) carried out sorties, targeting aircraft, flight corridors and missile sites. Those strikes hit areas surrounding Benghazi in order to protect civilians there from the fierce attacks of Gaddafi's forces.⁹⁴⁵ Soon after, the National Transitional Council headed by Mustafa Abdul Jalil was established and received international recognition as the legitimate authority in Libya.⁹⁴⁶ Moreover, large Libyan military split and formed the Libyan People's Army under Brigadier General Abdel Fattah al-Obeidi to defend protesters and the Libyan people. The Libyan People's Army forces quickly moved to the offensive.⁹⁴⁷

These forces progressed westward from eastern Libya under the protection of the NATO air forces and reached the outskirts of the capital Tripoli. On 20 August 2011, the rebels

⁹⁴¹ Simon Chesterman, 'Leading from Behind': The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention After Libya, *Ethics & International Affairs*, Vol. 25, 2011, pp 279–285

⁹⁴² Christopher Chivvis, *Libya and the Future of Liberal Intervention*, *Survival: Global Politics and Strategy*, Vol. 54, No. 6, pp 69-92, 2012 ; see also Williams Paul, Popken Colleen, *Security Council Resolution 1973 on Libya: A Moment of Legal & Moral Clarity*, *Case Western Reserve Journal of International Law* (2012) Vol. 44, No. 1-2, pp 225-250 ; see also Kjell Engelbrekt, Marcus Mohlin, Charlotte Wagnsson, *The NATO Intervention in Libya: Lessons Learned from the Campaign*, Routledge, 2013, pp. 41-52 ; also Aidan Hehir, Robert Murray, *Libya, the Responsibility to Protect and the Future of Humanitarian Intervention*, Palgrave Macmillan, 2013, pp 171-173.

⁹⁴³ Williams Paul, Popken Colleen, *Security Council Resolution 1973 on Libya: A Moment of Legal & Moral Clarity*, *Case Western Reserve Journal of International Law* (2012) Vol. 44, No. 1-2, pp 225-250.

⁹⁴⁴ Julian Lehmann, *All Necessary Means to Protect Civilians: What the Intervention in Libya Says About the Relationship Between the Jus in Bello and the Jus ad Bellum*, *Journal of Conflict and Security Law* (2012) Volume 17, No.1, pp. 117-146.

⁹⁴⁵ Amy Eckert, *The Responsibility to Protect in the Anarchical Society: Power, Interest, and the Protection of Civilians in Libya and Syria*, *Denver Journal of International Law and Policy* (2012) Vol.41, No.

⁹⁴⁶ Karen Dabrowska, *The Libyan Revolution: Diary of Qadhafi's Newsgirl in London*, Author House, 2012, pp 155-156.

⁹⁴⁷ Jean-Pierre Filiu, *The Arab Revolution: Ten Lessons from the Democratic Uprising*, Oxford University Press, 2011, p86.

succeeded in storming the city of Tripoli and took control of the Tripoli International Airport the next day. The National Transitional Council then claimed to have full control over the city of Tripoli, the capital and most important city in Libya. Two months later, the rebels announced the death of Gaddafi, full control over Libya and the end of dictatorial rule.⁹⁴⁸

Some might argue that the UN Security Council resolution No. 1973 did not fully provide for the promotion of the right of political self-determination. Although the resolution's goal was to protect the Libyan people from human rights violations,⁹⁴⁹ the resolution sought to promote through support of the people's revolution.⁹⁵⁰ This claim is evidenced by the following sources.

1. Statements about the successive international resolutions aimed at supporting democracy in Libya. For example, when the EU met in February 2011, Cameron said, 'I think it is the moment for Europe to understand we should show real ambition about recognising that what's happening in North Africa is a democratic awakening, and we should be encouraging these countries down a democratic path'.⁹⁵¹
2. International recognition of the National Transitional Council as legitimate and the de facto authority in Libya during the Revolution. Such recognition came from France and Qatar, for example.⁹⁵² In addition, the EU opened a representative office in Benghazi, which was under the control of the Transitional Council.⁹⁵³

⁹⁴⁸ Chronology - Libya, *The Middle East Journal* (2012) Vol. 66, No.

⁹⁴⁹ James Pattison, *The Ethics of Humanitarian Intervention in Libya*, *Ethics & International Affairs*, Volume 25, Issue 3, 2011, pp 271-277. Also: Ivo Daalder, James Stavridis, *NATO's Victory in Libya: The Right Way to Run an Intervention*, *Foreign Affairs* (2012) Vol. 91, No. 2; see also Geir Ulfstein, Hege Christiansen, *The Legality of the NATO Bombing in Libya*, *International and Comparative Law Quarterly* (2013) Vol. 62, No. 1, pp. 159-171; see also Ian Williams, *Resolution 1973: Responsibility to Protect, Not Humanitarian Intervention in Libya*, *Washington Report on Middle East Affairs* (2011) Vol. 30, No. 4.

⁹⁵⁰ Jon Western Joshua Goldstein, *Humanitarian Intervention Comes of Age-Lessons from Somalia to Libya*, *Foreign Affairs* (2012) Volume. 90, No. 6; see also Julian Lehmann, *All Necessary Means to Protect Civilians: What the Intervention in Libya Says About the Relationship Between the Jus in Bello and the Jus ad Bellum*, *Journal of Conflict and Security Law* (2012) Vol. 17, No.1, pp. 117-146.

⁹⁵¹ Joe Murphy. 'EU Leaders Fail to Agree Action Plan for Libya' *London Evening Standard* (London, 11 March 2011) <<http://www.thisislondon.co.uk/standard/article-23931030-give-up-power-immediately-eu-prepares-gaddafi-ultimatum.do>> accessed 11 March 2011.

⁹⁵² Carlo Panara, Gary Wilson, *The Arab Spring: New Patterns for Democracy and International Law*, Martinus Nijhoff Publishers, 2013, p 68; see also Carlo Focarelli, *International Law as Social Construct: The Struggle for Global Justice*, Oxford University Press, 2012, p206.

⁹⁵³ Catherine Ashton Opens European Union Office in Benghazi (European Union External Action 22 May 2011) <http://europa.eu/rapid/press-release_IP-11-625_en.htm?locale=en> accessed 06 April 2013.

3. There were series of UN Security Council resolutions supporting the promotion of the right of political self-determination in Libya. In resolution No. 2009, the council gave legal support to international efforts to promote democracy in Libya, noting the need for the UN to take charge of such attempts to establish a democratic state in Libya. Thus, in the case, the council acknowledged the legal importance of democracy.⁹⁵⁴ In addition, resolution No. 2022 welcomed the establishment of the National Transitional Council, demonstrating that the council would not fail to achieve the Libyan people's aspirations to secure their political rights.⁹⁵⁵
4. The Security Council's lifting of all economic sanctions through resolution No. 2016 as soon as the National Transitional Council declared it had control of the country. The resolution welcomed the future of democracy in Libya and assured full respect for the basic rights of Libyan citizens. It also approved the National Transitional Council's declaration issued 23 October 2011 and called for the international community to cooperate with the new power in Libya and end economic sanctions.⁹⁵⁶

Thus, the Security Council moved towards implicit acknowledgement of the democratic revolution by the Libyan people as acceptable to the international community. Conversely, the Libyan dictatorship did not receive such acceptance. Moreover, note that the Security Council resolutions give the impression that the motive of the international intervention in Libya was to help the Libyan people obtain their rights, not only to protect them.

Van Landingham argued that, despite the lack of clear legal rules in the UN Charter on the promotion and protection of human rights, resolution No. 1973 has created such a customary rule of law.⁹⁵⁷ The Security Council's expansion of the justifications for intervention has also lead to positive developments in customary law.⁹⁵⁸ Additionally, the concept of the relationship between citizens and rulers, which is an internal competence issue, has gradually eroded.

⁹⁵⁴ UN, Security Council, Resolution No. 2009 (September 2011).

⁹⁵⁵ UN, Security Council, Resolution No. 2022 (December 2011).

⁹⁵⁶ UN, Security Council, Resolution No. 2016 (October 2011).

⁹⁵⁷ Van Landingham, The stars aligned: the legality, legitimacy, and legacy of 2011's humanitarian intervention in Libya, *Valparaiso University Law Review* (2012) Vol. 46, No. 3, pp.859-890.

⁹⁵⁸ Geir Ulfstein, Hege Christiansen, The Legality of the NATO Bombing in Libya, *International and Comparative Law Quarterly* (2013) Vol. 62, No. 1, pp. 159-171.

The international response to the crisis in Libya, particularly by the UN Security Council, came unusually quickly. The international intervention was not intended to stop ethnic or sectarian war between two states but, rather, to promote and protect the rights of the Libyan people from the oppression by their government.⁹⁵⁹ More importantly, the Security Council resolutions in this case did not encounter opposition within the council but were passed without reservations about their content.

5.3.4 Syria

The Syrian revolution is an extension of the Arab revolutions demanding an end to dictatorial rule and reaching the right of political self-determination, and coming on the heels of the success of those popular claims in Tunisia, Egypt, Yemen and Libya to end the dictatorial regimes.⁹⁶⁰ The Syrian people began petitioning for an end to the regime of Bashar al-Assad in Syria in March 2011. The Assad family has had authoritarian control of the Syrian state for approximately four decades.⁹⁶¹

The popular revolution in Syria differs from its counterparts in Egypt, Tunisia and Yemen because the army or military authority in these countries stood in neutrality without interference.⁹⁶² The Syrian revolution, however, approaches the case of Libya. The regime of al-Assad has met the demand for self-government with murder, torture and detention.⁹⁶³ The regime of al-Assad controls the Syrian military authority; he is the supreme commander of the armed forces, and his brother Maher is commander of important military units in the state.⁹⁶⁴ These data confirm that this regime will not relinquish power or give the Syrian

⁹⁵⁹ Alex Bellamy, *Libya and the Responsibility to Protect: The Exception and the Norm*, Ethics and International Affairs (2011) Volume 24, No. 2, pp 143 – 169.

⁹⁶⁰ Clement Henry, Ji-Hyang Jang, *The Arab Spring: Will It Lead to Democratic Transitions?* Palgrave Macmillan, 2013, pp.36-48.

⁹⁶¹ Peter Harling, Sarah Birke, *Beyond the Fall of the Syrian Regime*, Middle East Research and Information Project (2012).

⁹⁶² Ewan Harrison, Sara Mitchell, *The Triumph of Democracy and the Eclipse of the West*, Palgrave Macmillan, 2013, pp.45-48.

⁹⁶³ Ved Nanda, *The Future Under International Law of the Responsibility to Protect after Libya and Syria*, Michigan State International Law Review (2013) Vol. 21 Issue 1, p1.

⁹⁶⁴ Gilbert Achcar, *People Want: A Radical Exploration of the Arab Uprising*, University of California Press, 2013, pp. 175-176.

people the right of self-determination but will use military force to suppress these demands.⁹⁶⁵

The Syrian Revolution began on March 15 when some Syrian pupils wrote phrases that called for an end to the current system of government. Assad's forces arrested these children; tortured and killed a child called Hamza al-Khatib, and sent his dead body to his family.⁹⁶⁶ After this, several peaceful demonstrations to demand an end to the regime and were held to demand the right of political self-determination. The regime of al-Assad repressed these demands, killed thousands of demonstrators and threw thousands of others in prison. The idea of a self-determined government has gained popularity even with the continuation of the regime's systematic repression.⁹⁶⁷ This repression contributed to organised splits that caused some members of the Syrian army to stand with the people.⁹⁶⁸ The dissident soldiers worked to support the popular demands, which contributed to the outbreak of armed conflict between the dissidents, or Free Syrian Army, and the forces loyal to Bashar al-Assad, mostly from the Alawite sect to which the regime belongs. The regime continued to use suppression, massacres and chemical weapons to stop the spread of the popular demands in almost all Syrian cities.⁹⁶⁹

In August 2011, the United Nations Human Rights Council set up an Independent International Commission of Inquiry on the Syrian conflict.⁹⁷⁰ In November 2011, the Commission issued its first report, which stated that there was excessive use of armed force by the regime against the protesters.⁹⁷¹ In August 2012, the Human Rights Council stated that the al-Assad regime regularly practiced systematic repression and accused the regime of war crimes and crimes against humanity.⁹⁷²

⁹⁶⁵ Stephen Starr, *Revolt in Syria: Eye-witness to the Uprising*, Hurst Publishers, 2012, p. 206.

⁹⁶⁶ Michael Weiss, *Is Bashar al-Assad the real hero of the Syrian revolution?* The Telegraph, 12 July 2011, available at (<http://blogs.telegraph.co.uk/news/michaelweiss/100096456/is-bashar-al-assad-the-real-hero-of-the-syrian-revolution/>) accessed 14/07/2017.

⁹⁶⁷ Peter Harling, Sarah Birke, *Beyond the Fall of the Syrian Regime*, Middle East Research and Information Project (2012).

⁹⁶⁸ Ibid

⁹⁶⁹ Ibid

⁹⁷⁰ UN, The Human Rights Council, Resolution No. S-17/1, 22 August 2011, available at (http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/ResS17_1.pdf) accessed 12/07/2014.

⁹⁷¹ UN, The Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, 23 November 2011, available at (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/170/97/PDF/G1117097.pdf?OpenElement>) accessed 12/07/2014.

⁹⁷² UN, The Human Rights Council, Report of the independent international commission of inquiry on the Syrian Arab Republic, 16 August 2012, available at

As mentioned earlier, the Syrian revolution is similar to the Libyan revolution in terms of form and content. The regimes in Syria and Libya have used repression, torture and murder to stop those demands for self-determination.⁹⁷³ However, there is a difference between the two cases. The Libyan case found effective international support through international intervention, based on U.N. Security Council resolutions Nos. 1970⁹⁷⁴ and 1973.⁹⁷⁵ Regarding the Syrian issue, both Russia and China have balked at Security Council resolutions that would support and protect the popular demand in Syria.⁹⁷⁶

The Security Council has failed to pass three strongly worded resolutions that aimed to end the conflict and the systematic repression. The first decision placed on the Security Council table was in October 2011. It intended to impose economic sanctions on the al-Assad regime in an attempt to stop the repression and murders. In February 2012, the Arab members in the United Nations decided to invite Assad to leave power and they implemented the Arab League initiative.⁹⁷⁷ The third attempt came from the United Kingdom, which offered a resolution calling for the international community to impose economic sanctions on the Syrian government unless it withdrew heavy weapons from populated areas within 10 days.⁹⁷⁸ These attempts collided with Russia and China's right of veto. The data received from the Russian and Chinese sides indicate that it must commit to the rules of international law.⁹⁷⁹ There is no doubt that the intent of this data is article 2/7 of the UN Charter,⁹⁸⁰ which is the objective basis for the principle of non-interference.⁹⁸¹

(http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf) accessed 12/07/2014.

⁹⁷³ Rein Mullerson, *Regime Change: From Democratic Peace Theories to Forcible Regime Change*, Martinus Nijhoff Publishers, 2013, p.198.

⁹⁷⁴ UN, Security Council, Resolution No. 1970 (February 2011).

⁹⁷⁵ UN, Security Council, Resolution 1973 (March 2011).

⁹⁷⁶ Rowena Maguire, Bridget Lewis, Charles Sampford, *Shifting Global Powers and International Law: Challenges and Opportunities*, Routledge, 2013, pp. 91-92.

⁹⁷⁷ UN, Security Council, Meeting No. 6711, Security Council Fails to Adopt Draft Resolution on Syria as Russian Federation, China Veto Text Supporting Arab League's Proposed Peace Plan, available at (<http://www.un.org/News/Press/docs/2012/sc10536.doc.htm>) accessed 13/07/2014.

⁹⁷⁸ UN, Security Council, Meeting No. 6810, Threatened Sanctions, Due to Negative Votes of China, Russian Federation, available at (<http://www.un.org/News/Press/docs/2012/sc10714.doc.htm>) accessed 13/07/2014.

⁹⁷⁹ Syria Crisis: Russia Warns Obama Against 'Violation' of International Law, NBC, 22 Aug 2012, available at (http://worldnews.nbcnews.com/_news/2012/08/22/13409128-syria-crisis-russia-warns-obama-against-violation-of-international-law?lite) accessed 11/07/2014

⁹⁸⁰ UN Charter (1945)

⁹⁸¹ Francis Kofi Abiew, *The Evolution of the Doctrine and Practice of Humanitarian Intervention*, Kluwer Law International, 1999, pp. 64-74.

In the view of some international law scholars, such as Paul Williams, Trevor Ulbrick and Jonathan Worboys, the failure of the UN Security Council to take coercive measures to protect the Syrian people must be offset by activating the principle of the responsibility to protect.⁹⁸² This opinion is resulting in a move to create specific criteria allowing for limited use of force when the Security Council fails to protect the Syrian people, such as the imposition of a no-fly zone or provision of safe havens for the Syrians. These standards are based on the principle of responsibility to protect, which holds the international community fully responsible for protecting the Syrian people if the local authorities fail in to do so.⁹⁸³

Despite the failure of the Security Council, the international community, through other international organizations, has sought to strengthen the Syrian Revolution's demands and has tried to protect freedom seekers from oppression. For example, in November 2011, the Arab League imposed comprehensive economic sanctions on the Syrian regime. These sanctions did not stop the exchange of trade, but were imposed to inhibit senior leaders of the regime, to prevent them from entering other Arab countries and to freeze all the bank accounts.⁹⁸⁴ Moreover, the Arab League has voted to suspend Syria's membership in all political, economic and cultural activities.⁹⁸⁵

In December 2011, the European Union imposed economic sanctions on the Syrian regime and state-owned enterprises, targeting petroleum companies in particular. At the same time, the European Union imposed personal sanctions on the leaders of the regime involved in supporting or participating in the systematic repression.⁹⁸⁶ It does not just depend on the international organizations, however. Many states have adopted the same behaviours in the protection of repressed people. For example, in July 2012, Japan announced it had imposed sanctions on the Syrian regime, including freezing the assets of members of Syria's ruling

⁹⁸² Paul Williams, Trevor Ulbrick, Jonathan Worboys, Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis, *Case Western Reserve Journal of International Law* (2012) Vol. 45, No. 1-2.

⁹⁸³ Ibid.

⁹⁸⁴ The Arab League's and Turkey's decision to impose sanction against Syria: Isolating Damascus, *Today's Zaman*, 29 November 2011, available at (<http://www.todayszaman.com/news-264224-the-arab-leagues-and-turkeys-decision-to-impose-sanction-against-syria-isolating-damascus.html>) accessed 15/07/ 2014.

⁹⁸⁵ Heather Roff, *Global Justice, Kant and the Responsibility to Protect: A Provisional Duty*, Routledge, 2013, p. 131.

⁹⁸⁶ Toby Manhire, *The Arab Spring: Rebellion, Revolution, and a New World Order*, Guardian Books, 2012, p.86.

regime and preventing Syrian aircraft from landing at Japanese airports.⁹⁸⁷ Turkey has also imposed economic and military sanctions. These sanctions include stopping the passage of any military shipments to the al-Assad regime. Turkey is suspending the security agreements between the two countries to protect the Syrian refugees in Turkey pursued by the Syrian regime.⁹⁸⁸

We note that the popular demand for an end to the dictatorial regime and the realization of the right of political self-determination is the foundation on which the Syrian Revolution is based. Also consider that the Syrian people continued protests and claims to achieve these goals in spite of the intransigence of the regime and its resistance through the use of murder, repression, displacement and chemical weapons.⁹⁸⁹ Therefore, the international attention on the protection of the revolution and on the protests of human rights abuses are evidence of the international community's support for these rights, providing additional legitimacy to the Syrian people's demands. This means the revolution has attained the acceptance of the international community in terms of its goals and objectives, particularly the right to political self-determination.⁹⁹⁰

Moreover, many countries and international organizations have recognized the National Coalition for Syrian Revolutionary and Opposition Forces and consider the organization a legitimate representative of the Syrian people.⁹⁹¹ The Arab League, in a statement issued in November 2011, said it welcomes this coalition as the Syrian people's representative.⁹⁹² The League called on the international community and international organizations to recognize this coalition and regard it as the sole representative of the Syrian people. In addition, the United States and France recognized this coalition by agreeing to open representative offices

⁹⁸⁷ Kyodo, Tokyo confab calls for stronger sanctions against Syria, The Japan Times News, 1 Dec 2012, available at (http://www.japantimes.co.jp/news/2012/12/01/national/tokyo-confab-calls-for-stronger-sanctions-against-syria/#.U8wNd_IdUdk) accessed 15/07/ 2014.

⁹⁸⁸ The Arab League's and Turkey's decision to impose sanction against Syria: Isolating Damascus, Today's Zaman, 29 November 2011, available at (<http://www.todayzaman.com/news-264224-the-arab-leagues-and-turkeys-decision-to-impose-sanction-against-syria-isolating-damascus.html>) accessed 15/07/ 2014.

⁹⁸⁹ Peter Harling, Sarah Birke, Beyond the Fall of the Syrian Regime, Middle East Research and Information Project (2012).

⁹⁹⁰ Paul Williams, Trevor Ulbrick, Jonathan Worboys, Preventing Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis, Case Western Reserve Journal of International Law (2012) Vol. 45, No. 1-2.

⁹⁹¹ Patrick Nee, Key Facts on Syria: Essential Information on Syria, The Internationalist, 2013, p.1.

⁹⁹² Arab League recognizes Syria's new opposition bloc, Alarabiya News, 12 November 2012, available at (<http://english.alarabiya.net/articles/2012/11/12/249215.html>) accessed 14/07/ 2014.

in their own countries.⁹⁹³ It is true that many countries and organisations have been silent about recognising the Syrian opposition coalition, but countries, such as Switzerland and Netherlands, did not object to this recognition and did not prevent members of the coalition from traveling through their countries.⁹⁹⁴

International behaviour in promoting and supporting the Syrian people's right to political self-determination exceeded the scope of the Security Council, and the international community went beyond the Security Council's decisions.⁹⁹⁵ Numerous countries and international organisations have contributed to the creation of an international practice leading to a significant result—that in the case of the Security Council's inability to keep up with the demand to protect human rights, the international community can create measures to promote and protect these rights. This does not mean that the legal force of the Council has become weak. It simply means that the international community, especially international organisations, can exercise an active role in the international arena.

This is what happened when a number of countries and international organizations took measures to protect the Syrian people and strengthen their demands. By doing so, the international community recognized the legitimacy of these demands without being bound by the views of Russia and China in dealing with the Syrian issue.

5.5 Conclusion

The practices and international interventions that have been reviewed in this chapter clearly show the attention paid to the promotion of the right of political self-determination. During the Cold War, the principle of non-interference was more powerful because the international interests of each camp were more important than concerns for human rights. However, the strengthening of the right to political self-determination found effective support through

⁹⁹³ Global Security, Middle Eastern Para-Military Groups, National Coalition of Syrian Revolution and Opposition Forces, available at (<http://www.globalsecurity.org/military/world/para/syrian-national-coalition.htm>) accessed 15/07/2014.

⁹⁹⁴ EU recognises Syrian National Coalition as 'legitimate' representative, France 24, 19 November 2012, available at (<http://www.france24.com/en/20121119-eu-recognises-opposition-bloc-legitimate-syrian-national-coalition-representative/>) accessed 15/07/2014.

⁹⁹⁵ Laurie Blank, Geoffrey Corn, Losing the Forest for the Trees: Syria, Law, and the Pragmatics of Conflict Recognition, *Vanderbilt Journal of Transnational Law* (2013) Vol. 46, No. 3.

international practices and interventions in Southern Rhodesia, the Dominican Republic and Panama. The international approach to promoting this right in these cases was walking in challenging with the principle of non-interference. Consider that people's demands for the right of political self-determination is objective for this approach and for the promotion and support of these demands.

This does not mean that the principle of non-intervention was a weak effect in that period. In the case of Panama, for example, there is a rejection of many of the states of the U.S. intervention in Panama. The reason may be that this intervention was not by an international organization or international authorization, but it was unilaterally done by one state. However, this intervention has contributed to the promotion of this right. More importantly, the Panamanian people have contributed to this right, where the democratic governments continued successive in the administration of the country under the positive acceptance of the Panamanian people. Thus, promotion of the right of political self-determination was found effective in many cases. Despite the strength of the principle of non-intervention during the Cold War period, a result of its ease of use against international resolutions would contribute to the promotion of the right to political self-determination of people.

In the subsequent period of the Cold War, this approach involved taking steps without the influence of the principle of non-interference. In Haiti, the international community did not accept the coup against legitimacy; the legitimate government was the result of the struggle of the Haitian people to obtain the right of political self-determination. The UN Security Council resolution No. 940 helped restore this right to the Haitian people. The same thing occurred in the case of Sierra Leone, where the international community sought to restore the legitimate government, which had been chosen by the people and not by a military force. In Libya, the UN Security Council helped protect the popular demand for an end to the dictatorial regime and the realization of the right of political self-determination. In Syria, there is a conflict between the principle of non-interference and the efforts to promote and protect the popular demands, which is facing repression. This conflict became more pronounced when Russia and China refused to pass Security Council resolutions, which aimed at protecting those claims of repression. There are many organizations and countries however, that have subsided the Security Council and have taken measures to try to promote and protect the people's demands. For example, the Arab League and the European Union, who have imposed economic sanctions on the Syrian regime.

The objective criteria for international interventions are to protect and promote the popular demand for political self-determination or to restore this right and end dictatorial rule. Consequently, these criteria were not subject to the principle of non-interference when any intervention attempts were made. Ultimately, when using the principle of non-interference against any international resolution to promote and protect the popular demand for the right of political self-determination, the international community resorts to making similar decisions in different ways, such as by regional and international organizations. This means that the attention of the international community on the promotion and protection of the right to political self-determination, which collides with repressive regimes, should have more leverage from the principle of non-interference in actual practice.

Conclusion

As described in the introduction of this dissertation, the main research question is as follows: Does the principle of non-interference impact on the path of the right to political self-determination in international law? This dissertation showed that this right has become an integral part of contemporary legal ideology, which is based on concern for human rights and the rights of peoples. The right of political self-determination provides a perfect complement to other human rights, ensuring respect for and protection of those rights. The right of political self-determination stems from contemporary intellectual interests in upholding human dignity, enforcing rights granted under international law and eliminating slavery and dictatorships. Arguably, this right not only complements but is more comprehensive than other human rights as it represents the popular will of all, or the majority, of citizens in a society. This dissertation explains the legal relationship between democracy and the right of political self-determination. Democratic government is considered an indication that peoples have determined their own political destiny; thus, democracy has become an essential element of the right of political self-determination.

The right of political self-determination is supported by many international instruments, the most prominent being the 1946 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights and the eighth principle of the 1975 Helsinki Convention. Moreover, many international practices support this approach such as the economic sanctions imposed on South Africa and on Syria by the EU and measures taken by the UN to support democracy in Haiti in 1994–1995. Legal jurisprudence has identified two manifestations of the right to self-determination. The external manifestation is desire for secession or independence from a colonial power or merger with another state, while the internal manifestation is the freedom of a nation to arrange its own economic and political affairs and to grant social and cultural rights.

The study raised normative questions about the propriety of the right of political self-determination with the concept of the statehood in international law. Specifically, the research examined state-building criteria in international law and how such criteria are linked to claims to this right. Results show that the right of political self-determination

is not in conflict with the traditional criteria of statehood, particularly in the criteria of the Montevideo Convention. Clearly, the right does not violate the objectivity and formal aspects of state-building criteria. Along with emerging themes in international law, specifically in the domain of human rights; the right of political self-determination in fact contributes to the development of such criteria. This argument can be made clear by making democracy a legal prerequisite for statehood, through which can ensure that harmony exists between the people and their government. Therefore, the right to political self-determination does not place any legal restrictions on state-building criteria. To the contrary, it adds new standards—the standards of agreement and integration between peoples and their governments.

As well, this dissertation demonstrated that popular demand forms the substantive basis for the right of political self-determination. Popular demand for this right differs from other claims connected to self-determination, such as demands for independence from colonialism or for secession from a mother country. Popular demand for the right of political self-determination frequently arises in the context of dictatorial states and authoritarian regimes as the main objectives of these claims are to achieve freedom from tyranny and to allow all people to participate in the selection of the government and means of running the country. Authoritarian regimes consistently use repressive measures to deny such claims and remain in power.

The dissertation explained that this repression pushes members of the international community, whether states or organizations, to adopt measures and interventions within the framework of international law to protect and promote these claims. There is no doubt that these measures are inconsistent with the principle of non-interference. However, this principle faces strong opposition, especially as it assumes the absolute sovereignty of the state. This opposition originates in recent principles and legal developments intended to protect and promote human rights, such as the principle of responsibility to protect, the establishment of the International Criminal Court (ICC) and international interventions on many issues within the framework of international law. This opposition to the principle of non-interference has demonstrated that the sovereignty of the state is not an absolute but a dynamic concept, evolving within modern international law. States and governments can no

longer freely act against their people in ways that violate international human rights law and expect to be shielded by the concept of absolute sovereignty.

These factors have contributed to transforming the concept of non-interference from an absolute principle forbidding intervention under any circumstances into a relative guideline which permits international intervention when consistent with the objectives of contemporary international law. Specifically, such interventions may support and protect individual and collective human rights, especially against abuses committed by dictatorial governments against their own peoples. This transformation has not been limited to the principle of non-interference but has extended to the concept of state sovereignty in general.

This dissertation revealed the various concepts and types of interventions in international law and identifies a broad and a narrow category of international interventions. These interventions promote the right of political self-determination under the broad concept that they do not depend only on military measures but also on political and economic measures. The reason for this is the purpose of the right to achieve security and stability for the people. Resorting to political and economic measures in an attempt to promote the right of political self-determination is therefore appropriate before resorting to military intervention, which may lead to disastrous effects. International interventions which protect human rights and those which promote the right to self-determination overlap and, in some ways, are homogeneous; the actions involved are similar, but the outcomes are different. These interventions could result in the protection of human rights or the fulfilment of popular demand for political self-determination, as in the case of Libya.

However, there are limitations to interventions that promote the right to political self-determination. The first of these is coercion, while the second is UN General Assembly resolution no. 2131's stipulation that the choice of a governmental system and approach to running a country is a local affair. This dissertation has argued that the absolute impermissibility of intervening for these reasons results in authorities being granted full freedom to violate human rights as a means of staying in power. However, international organisations monitor democratic procedures within states and seek to ensure the integrity of these procedures and their results. Moreover, coercion and domestic political affairs based

mainly on the principle of non-interference, as illustrated in this thesis, face stiff headwinds because of the need to protect human rights and the international community's responsibility to provide such protection.

This dissertation showed that this elasticity in the principle of non-interference, in the modern approach, clarifies the priority of promoting the right to political self-determination when there are direct conflicts between them. This dissertation found that, in many cases, international promotion of the right to political self-determination triumphs. For example, when Russia and China vetoed the UN Security Council measures to protect the rights of the Syrian people, many organizations and countries—including the League of Arab States, the European Union, Turkey and Japan—worked outside of the UN to support the needs of the Syrian people.

In conclusion, one can say that in the face of international efforts to promote the right to political self-determination, the principle of non-interference has become more flexible and has not hindered the effectiveness of such efforts. The right to political self-determination has found support from many rules of international law and is consistent with contemporary human and legal thought. More importantly, the principle of non-interference has received repeated challenges, which have weakened it and supported the aspirations of contemporary legal thought to promote human rights and the rights of people.

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